been raised last week. I would like, through you Sir, to point out and bring to the notice of the House the following figures which have been given in the Public Enterprises Survey, 1996-97 — I think most of the Members will be having it. The figures speak for themselves before you write the obituary. The public enterprises in the year 1996-97 earned a net profit of Rs. 16,120 crores. The loss has been Rs. 5,862 crores. That means, the profit of 236 enterprises which are registered as per the Companies Act is Rs. 10,254 crores. The dividend, corporate tax, excise duty, customs and other duties together come to Rs. 37,000 crores. Apart from this profit, Rs. 37,497 crores have gone to the Government exchequer. Do you think under these circumstances any owner who has owned this as a whole would have talked of disinvesting 74 per cent of its equity? The whole investment in these institutions has come from the Government. All the public sector organisations have come into being through an Act of Parliament. They are public property. Sir, when we go into a railway compartment we still see "रेलवे आपकी सम्पत्ति है। इसकी रक्षा करना आपका कर्त्तव्य है।" If this is not public property, what else is? If that is the path, can the Parliament be a silent spectator to various decisions of the Government and all sorts of campaign against the public sector through corporate Press? So, we again demand, through you Sir, and request you to give a direction — we are not shying-away from any discussion. Let there be a discussion in Parliament which is the custodian of this public asset. Let there be a fullfledged unit by unit discussion to decide which asset has to be disposed of and which asset has to be kept with us. Sir, I want this direction from you. I have no confidence in this Government, this *swadeshi*. Government because a *swadeshi* spinning mill in Uttar Pradesh — I can also tell the name of that company — has been wound up. I am telling you about 12 companies in Uttar Pradesh. 12 कॉरपोरेट कंपनीज़ हैं। 66 में से भी 18 हैं, हमारे उत्तर प्रदेश में तो जब इसका ख्याल रखना है तो Sir, I am appealing to you to give a direction to the Government that this House must discuss this issue in this session itself. Would you kindly give this direction as I have finished my speech in two-and-a-half minutes?

THE VICE-CHAIRMAN (SHRI SANATAN BISI): The House stands adjourned for one hour.

The House then adjourned for lunch at four minutes past one of the clock.

The House re-assembled after lunch at nine minutes past two of the clock,

The Vice-Chairman (Shri Sanatan Bisi) in the Chair.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): We will take up the High Court and Supreme Court Judges (conditions of Service) Amendment Bill, 1998 and the Statutory Resolution. Shri Gurudas Das Gupta to move the Statutory Resolution.

I. Statutory Resolution Seeking Disapproval of the High Court and Supreme Court Judges (Conditions of Service) Amendment Ordinance, 1998 (No. 11 of 1998)

II. The High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1998

SHRI GURUDAS DAS GUPTA (West Bengal): Sir, I beg to move:

> "That this House disapproves of the High Court and Supreme court Judges (conditions of Service) amendment Ordinance, 1988 (No. 11 of 1998) promulgated by the President on the 24th April, 1998."

Sir, this is not a customary opposition on ordinances but this is little more than that. There has been a sizeable increase in the salaries. It is for this House and the country to understand whether such a hefty rise should be considered or not. I have my doubts. Secondly, Sir, what was the need for going in for an Ordinance instead of coming to the House for

necessary amendments? What was the haste? The Judges have never threatened a strike. I do not know. The hon. Finance Minister must be having information, reliable information ...(*Interruptions*)...

THE MINISTER OF FINANCE (SHRI YASHWANT SINHA): Justice Ranganath Mishra is also here ...(*Interruptions*)...

SHRI GURUDAS DAS GUPTA: Sir, we are privileged by the presence of the former Chief Justice. But, I would like to be enlightened as to what was the haste and as to why the Government had to take recourse to the promulgation of an Ordinance even on the salaries of the judiciary. This is unusual. The House could have been approached. We would never say that we do not agree to it. What was the haste? Sir, my objection is that we are trying to rule the country by Ordinances. The people who have been most critical of this system are now in the Government. But, they are playing the same trick and they are following the same line. They are taking upon themselves the same way of buildozing the legislative system. Whenever you wish an Ordinance, it is some sort of indirect pressure which is put on this legislature. I would like to know as to what was the immediate cause or as to what was the immediate provocation. It might be so that the salaries of the Government employees have been increased. But, does it mean that it could not have waited for the normal legislative transaction of business that take place in the House? Sir, this is my humble submission. Secondly, Sir, we appreciate the role of the judiciary in recent period. We appreciate that. On a number of issues when legislature did not play its role, when the Parliament refused to take cognizance of a number of developments, the judiciary intervened. We appreciate that. But, Sir, this is one side of the picture. There is another side of the picture. The judiciary has to be accountable. If Parliament is to be accountable, the judiciary is also to be accountable. Sir, there is piling up of millions of cases in the country. There may be shortage of judges and for that the Government is to be held responsible. Apart from that, there are instances when a case has been heard by an hon. Justice, the judgement was to be delivered, but it was delayed in an inordinate way. it is being delayed. Sir, most unfortunately if you approach a leading lawyer to take up the case of a client and approach the court for an expeditious disposal of the case, he would immediately come to you and say, "No, no, do not go for a reference. That may antagonise and may bring forth a different judgement." This is what is being told. Therefore, what is the accountability? If a case is heard and evidence is taken, should the judgement not be delivered? Sir, I may refer to two very sensitive cases. I am referring to a public litigation with regard to Baila Bila. This House also discussed it. There was a public interest litigation. The case has been heard, but the judgement has not been given. It may be in the Delhi High Court. The judgement has not been given for a long time. sir, I may refer to another sensitive case of a newspaper baron who has been hauled up for violating foreign exchange regulations. Now, he seems to be in judicial custody. He seems to be in judicial custody, maybe, in a hospital, five star hospital in Bombay. Sir that case was heard in Delhi. That case has been heard—it is not a day or a month— but, for months judgement has not been given. Sir, justice delayed is justice denied. This is the elementary education which the judiciary gives us. If it is true for somebody else, why is it not true for the judiciary? Shall I be enlightened by the leading luminaries of the Indian judiciary and Indian Law Department who are sitting here? This is leading to a very difficult situation for the country.

Therefore, I call upon this House to kindly take note of the fact that judiciary has also to be accountable and it has been found to be wanting, at least in some cases if not in all. While applauding

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the judicial activism, while applauding some of the landmarks in the judgements that have brought about accountability in public life by the Supreme Court, I cannot but say, the same is not true in all cases. It has been found to be wanting. Therefore, I would like to make this point to ask the Government as to what are its views on the issue that I have raised.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI M. THAMBI DURAI): Sir, I beg to move:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (conditions of Service) Act, 1958, as passed by Lok Sabha, be taken into consideration."

Sir, as we are aware, the salaries of the judges of High Courts and the Supreme Court were last revised with effect from 1st April, 1986 when the pay scales of the Central Government Employees were revised on the basis of the recommendations of the Fourth Central Pay Commission. The Fifth Central Pay Commission has recommended the revision in salaries and other allowances of the Central Government Employees including the members of the All India Services. The Government has accepted majority of the recommendations. The Notification, revising the pay rolls of the Central Government Employees, has also been issued. The revised pay rolls are due to have come into force on the 1st day of Januarty, 1996. Having considered all aspects of the matter, it became necesaary to increase the salaries of the judges with effect from 1st January, 1996. Since the Parliament was not in session, the Hon. President has promulgated the High Court and Supreme Court Judges (Conditions of Service) Ordinance, 1998, on the 24th day of April, 1998 to give effect to the increase in the salaries of the judges. I hope the Bill to replace the above Ordinance will receive the wholehearted support of the House.

The questions were proposed.

SHRI GURUDAS DAS GUPTA: Sir, he has not answered my question.

SHRI M. THAMBI DURAI: Sir, I will answer that. I have noted all the points. Definitely, I am going to answer all those points. The debate is not yet over.

SHRI RANGANATH MISHRA (Orissa): Mr. Vice-chairman, Sir, I entered this House in 1958 when I came as a visitor. I was struck by the augustness of the body and for an opportunity to be here, not as a Member, but again. It is a chance that I have come here and the first thing that I have been asked to speak on is a matter with which I have also an indirect relationship if the salaries are enhanced, the pension might also be enhanced in due course and I would be a beneficiary. Therefore, I should make a statement to the House disclosing the fact before I speak. I would agree with the statement made by my colleague that the judiciary has to be accountable. We are all trustees; whether one is in the judiciary or in the legislature or in the executive. We are all trustees. Sir, 100 crores of people look upon us to be accountable to them. Therefore, the judiciary is no exception and it should be accountale in the same way as every public authority is. There may be some limitations to the extent that the functioning of the judiciary requires certain amenities, certain benefits and certain situational arrangements. If everything is made public, it may be difficult to function. Therefore, subject to justifiable limits of convenience of the system, the judiciary should be as accountable as any other public body. I am also of the view that an Ordinance, probably, was not necessary and if an Ordinance was considered at all necessary, the Ministry of Justice should have advised the Government of India that there was no hurry in making it statute. As early as in 1962, a Constitution Bench of the Supreme Court indicated that with the lapsing of an Ordinance, what has been done does not lapse. The Constitution Bench in its decision in the State of

Orissa Vs. Bhupendra AIR 1962. Supreme Court-945, clearly laid down, by unanimity, that once corrections have been made by an Ordinance, at the end of the period, the Ordinance lapsing, they do not reopen. They have been engraved as law and they will continue to be there in spite of the ordinance lapsing. That being the situation, there was no hurry for the government to ask the Parliament to pass it without proper and adequate consideration. The Minister of Law should also have been aware of this judgement delivered in 1962, where in an election case in a municipal matter changes through an Ordinance were brought. The Ordinance lapsed and then the matter was raised in court saying that the Ordinance having lapsed the alterations had gone. The Sdupreme Court had clearly indicated that the Ordinance had become engraved and they do not reopen. Inspite of the Ordinance dying. They are on the point of law. I have certain misgivings to be cleared by the Government. The Ministry of Law should have advised Government properly that there was a judgement by the Supreme Court, delivered about 5 years back in a related case of judges. I have distributed copies of it. *(Interruptions)* Has this been distributed? *(Interruptions)* It is an extract from the Judgement. I am giving anything else. It is a reported judgement, which I want to give for the convenience of reference. Can it be distributed?

THE VICE-CHAIRMAN (SHRI SANATAN BISI): No. Please go ahead. You can read out from it.

SHRI RANGANATH MISHRA: They were dealing with the executive, the bureaucratic executive, the judges, the politicians, who are policy-makers and the legislators. In that background they have indicated, "We cannot, however, help observing that the failure to realise the distinction between the judicial services and other services is at the bottom of hostility displayed by review-petitioners in the directions given in the judgement. The judicial service is not a service in the sense of employment. The judges are not employees. They are holders of public offices in the same way as the Members of the Council of Ministers and the Members of the Legislatures. When it is said that in a democracy, such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them, in turn, represents the authority of the State. However, those who exercised the State power are the Ministers, the legislators and the judges and not the members of staff who implement or assist in implementing their decisions. The Council of Ministers or the political exeutive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the judges from the judicial staff. The parity is between the political executive, the legislators and the judges and not between the judges and the administrative executives. In some democracies like the United States of America, Members of some State judiciaries are elected as much as the Members of the Legislature and the Heads of the State. The judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed at par with the members of the judiciary, either constitutionally or functionaly.

The distinction between the judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of the independence of the judiciary, and no price is too heavy to secure it. To keep the

judges in want of the essential accompaniments and thus to impede them in the prompt discharge of their duties is to impair and whittle away justice itself. It is high time that all concerned appreciated it. For the reasons pointed out above, there cannot be any link between the service conditions of the judges and those of the members of the other services. As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive, but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive. Any attempt to place it at par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service conditions of the judiciary must be comparable to those of the administrative executive.

Sir, I am relying on these observations of the Supreme Court. This has been very much known to Government, particularly, to the Ministry of Justice and should have been pointed out in due course, and in good time to Government when they were trying to follow the Fifth Pay Commission Report or Government's decision to adopt it and when they were thinking of extending the benefits to the judges.

In 1871, that is about 80 years before the Constitution came into force, the High Court Judges' salary was fixed at Rs.4000 per month. It continued up to 1950 and on 26th January, 1950, when we adopted the Constitution we reduced the salary of a High Court Judge by Rs. 500/=, and it became Rs. 3,500/-. I am not attacking any particular public officer. I have no intention to say that whatever has been given by Government to the cabinet Secretary requires to be altered or reduced. I have got to refer to it because that is the compariosn which Government have borne in mind in fixing the salary of judges now, that is, in the Ordinance which we are considering for being made law. Therefore, at the time when a High court Judge was getting Rs.4000/-, the Cabinet Secretary was getting Rs.3,000/-. In 1950 the salary of a High Court Judge was reduced to Rs.3,500/- and the Cabinet Secretary continued to get Rs. 3,000/-. From 1950 to 1986, that is for 36 years—while there were three Pay Commissions in between, whose reports had already been acted upon and the Fourth Report had come—Government decided that the High Court Judge's salary, for the first time after 36 years should be enhanced. That is how in 1986 we got some benefits added. There was a hike in the salary and some allowances came. What I am trying to impress upon the Chair as also on the hon. Members is that for the last 36 years no attention was paid to this position. The salary fixed in 1950, reduced by Rs.500, was adopted and it continued to be enforced for 36 years. In between, three Pay Commissions had come and appropriate increments had been given to others, working under the Government. It is only when the disparity became very wide and too apparment elsewhere, that Government ultimately took it up.

I am obliged to my learned colleague who is now sitting on my left. He was the Minister then, and it was at his instance that concrete proposals came for consideration of Government, and they finally got adopted.

One thing should be borne in mind that, for the first time the salary of the Cabinet Secretary was raised beyond Rs.3000/ in 1965. That is how the idea of equality and parity introduced into this system. The Supreme Court has indicated that the administrative executive should be subordinate to the superior courts. The superior courts in India traditionally have been the High Court and the Supreme Court. They have the jurisdiction to review executive action.

The three parallel wings which run the Government, that is, the Executive, the Judiciary and the Legislature, are actually at par. I do not know why a lot of people have been critical about my entering into this august House. They think that I have

come from that place down to this place. It has not been understood by me until now. The criticism had come in the press. There was a writ petition in the High Court, challenging my nomination as a candidate in the elections to the Council of States. It is very difficult to appreciate. The common man does not really understand that all the three wings are parallel bodies. They run in their respective channels and are intended to run in such a way that there is mutual respect, cordiality and understanding so that the Government functions in an appropriate way. The ability of function will depend upon how much of real understanding is maintained among the three wings for the ultimate purpose of running the country.

Therefore, the main point I would like to stress and highlight, is that the Cabinet Secretary's salary is not the basis for fixing the salary of judges. What has been done, under this Ordinance, is High Court Judge has been given Rs. 26,000/- which is Rs. 4,000/- less than what is given to the Cabinet Secretary. The salary of the High Court Chief Justice has been equated with that of a Supreme Court Judge. Then, the Chief Justice of India has been given Rs. 33,000/.

I understand Government has proposed that the Governor would be above the Chief Justice of India in regard to pay-scale. Sir, one thing has to be remembered here. Until we became independent, we did not have a Supreme Court. Until 1937, we did not have even a Federal Court. Therefore, in India, the system at that time was that the High Court was the highest judicial body, and, against its decision, apeals lay to the Privy Council located at London, there being no intermediate authority in between. There was therefore no occasion for fixing the status of the highest authority, the highest judicial authority, above the Governor.

After the Constitution came into being in 1950, while the salary of the Chief Justice of India was fixed at Rs. 5,000/-, the salary of the Governor was fixed at Rs. 5,500/-. But Sir, kindly note one thing. The Chief Justice of India occupies the fourth place in the order of precedence in the whole country. He is bracketed with the Speaker of the Lok Sabha. Between them, whoever comes to office first, has seniority. That being the situation, the position of the Chief Justice of India being not anomalous—he is definitely at a higher pedestal—it should be made very clear by the Government and, position-wise, status-wise, it should be recognised in terms of the pay-scale.

Sir, in the case of the First Citizen of India, the President, we havegiven a higher pay-scale because of his status. He is the number one person in the country. Similarly, in one branch, *i.e.* the judicial wing, the Chief Justice of India occupies the highest position. Therefore, that should be recognised. That should be accepted as the basis. If that is the basis, there should be a proper reflection of it in the remuneration fixed for him. There should be no imbalance between the status and the pay-scale. The status and the pay-scale are ordinarily interlinked. We should bear this in mind while fixing the remuneration.

The other point I would like to make is this. It was indicated that the Ordinance tries to bring in a balance. I do not think there is any balance considered. The idea of bringing in a balance is, probably, either not there at all; or, if it is there, it is not the principal consideration for examination.

The judges perform a peculiar type of work. In fact, the Supreme Court, in another paragraph, has also referred to it. "We cannot shut our eyes to the reality that on account of the sizeable earning at the Bar, many times out of proportion to the skill and labour put in, the competent lawyers are reluctant to accept the judicial posts. There is such a dearth of proper talent available to man the judicial service. It is, therefore, for the health of the administration of justice that attractive service conditions are prescribed for the members of the judiciary".

When I was the Chief Justice, I had extended invitation to a lot of younger people, budding lawyers, who have come up and who would make excellent judges. But what has surprised me is that the tradition that if you are called, it is your duty to join, you should agree to become a judge, is no more there. They told me pointblank 'No; the conditions are such that we do not want to come'. This is what happens, particularly, in bigger towns like Madras, Bombay, and Calcutta. They think that is not good to become a High Court Judge. If you want really good people, if you want capable judges, if you do not want the objections made by my colleague, if you want a sense of commitment and capability to deliver justice without waiting and keeping them too long and if you want everything to be clean, you need capable people. Capable people in the judicial service means better conditions of service including a higher salary and other conditions that go along with it. A lawyer who argues before the Supreme Court takes about a lakh of rupees as his fees per day. He argues before a judicial authority who, on the enhanced basis, receives about Rs. 1,000/- as salary for the day. What is happening is that this disparity is growing. It is not being controlled and is not controllable. It is creating problems. It is appropriate that the conditions of serivce should be made really attractive. You can ask the judges to be accountable. I have no objection to it. In fact, that philosophy should grow. Because in some cases judges have not been accountable and because some judgements have not been delivered in good time, you cannot indict the entire system. The system on the whole is given due credit internationally. I have gone round several countries. The Chief Justices, the members of the Bar and other people there have been very appreciative of the judicial system in India. Fifty years of judicial role has been carried on. They have played their own role that way. The standards should be proper. Things are being done. Black sheep in every institutiion would be there. The Code of Civil Procedure indicates very clearly by an amendment that judgement has to be delivered within 30 days. Some of the judges feel that it is meant for the subordinate judiciary and that is not binding on the High Court or the Supeme Court. That is not proper. The legislative spirit has been indicated that you can reserve a judgement for 30 days and not beyond it. If you are reserving a judgement beyond 30 days, you become liable to rehear the matter because you may have forgotten it and some difficulty may arise because of the delay. Therefore, you should rehear it. Rehearing means money to the client. Rehearing means public time lost or wasted. We, therefore, agree that everything should be tiptop and everything should be done properly. But you can expect this only when there is no want. A judge who lilves in want, is not able to devote his mind when he is recording evidence in court. I know of one particular judge in the subordinate strata, who was found to be not writing the depositions very correctly and properly. We asked him to explain. He told me that his wife was ill during that period. That was his explanation. We checked it up. It was a fact that his wife was ill. He was not able to provide medical treatment and facilities to her. If you have a bothered mind, if you do not have a quiet mind and calm mind, you cannot perform this job conveniently. It is somebody else's botheration, some body else's worry which a judge takes over. When he reserves a judgement, he has to find out what decision would be able to fit how exactly into the situation. Unless one has worked in this position and has undergone the problem or the trouble that this system imposes on the judicial officer concerned, it is really very difficult to appreciate it.

Therefore, I appeal that the Government should be told that the conditions should not be joined or put on parity with those of the Cabinet Secreatry. If the Cabinet Secretary who is subordinate in terms of the Supreme Court judgement, is paid Rs. 30,000/-, the judges should be paid something more than that.

The other problem we have is the system of transferred judges. Supposing you transfer a judge from somewhere as Chief Justice to Delhi. Under the present scheme which has been approved by the Government, he will get Rs. 30,000/- plus Rs. 3,000/- as transfer allowance, that is, Rs. 33,000/-. After three or four months or a year, if he is promoted to the Supreme Court, he will lose the transfer allowance of Rs. 3,000/-. His salary will become Rs. 30,000/-. The transfer allowance will not be available. If he draws Rs. 33,000/- one, he should continue to be drawing the same salary. These things have to be considered, looked into and proper adjustments have to be made. What has been done in a hurried way, would require readjustment and reconsideration. That is my submission. The other thing is when the Government gave the public officers the benefit of the Fifth Pay Commission in September, they have no business to with hold it for three or four or five months. When the new government came in, it brought in this Ordinance, which is for consideratioin of this House today. I would, therefore, plead that the Ordinance as placed for consideration before this House should be altered such that the amounts indicated therein are modified and suitably raised so that this equation with the public officers as administrative executives is taken out and a fresh look is given to the entire matter. Thank you.

SHRI PRAFULL GORADIA (Gujarat): Sir, I rise to support the passing of the Bill called the High Court and Supreme Court Judges (Amendment) Bill. It is indeed a very pleasant duty to support such a Bill, which brings deserved benefit to a large number of our judges. The profession of a judge is indeed, a noble one and I would plead with the hon. Member, who began this discussion that, perhaps, every time a strike should not be essential for someone to get an increment. A noble profession particularly should be exempt from agitational requirements.

The other point mentioned was why there was a need for this hurried ordinance. I do not wish to emphasise this, but do wish to point out that as far as this Government is concerned, this Ordinance was a legacy. We were not the authors of this ordinance.

Having called it a noble profession, I would commend this increase that has been given in the Bill, which should become an Act. After all, a judge is well above all partisanship. In order to remain above partisanship, he must be well-paid and free from worries, as has been rightly pointed out by hon. Justice Mishra.

Of course, inflation is a fact of life. The cost of living goes up with inflation. It goes up for judges as much as for anyone else. It would be interesting to recall particularly since hon. Justice Mishra brought in some historical facts, that way back in 1821, i.e. 177 years ago, the notoriously corrupt East India Company, certainly gave a big tribute to its judges, because the Sadr Judge, now called the Chief Judge of the Bengal Presidency in 1821 received a salary of Rs. 40,000 per year, which, I suppose, if translated into today's value of the Rupee, would be something like Rs. 70 lakhs or Rs. 80 lakhs a year and would work out to a monthly salary of Rs. 6.5 lakh. That was history. Anyhow, we have been told officially that this enhancement of salaries will result in an extra expenditure of Rs. 71 lakhs per annum. I am sure that the expenditure will actually be much higher, because it will have a cascading effect down the line on the comparatively junior judges as well. That is only in the nature of things. Nevertheless I do not think that it matters, because our country is not on the look out for cheap judges. I think it is on the look out for cheap and quick justice. If that be so, we need to find out, while we are going to incur on behalf of the nation a cost of Rs. 71 lakhs per annum and more as I pointed out, what benefit the litigant is going to get; and more than the litigants, because after all litigants form only a small percentage of the total population, which consists of the

nation,.... what the nation is going to benefit from this increment because the training I have been given in my career so far is that no cost is too high, so long as there is a countervailing benefit, a commensurate benefit and not cost, however, low is justified, if it is a waste. If that be so, I think, speedy justice, quick justice, quick judgements would be the priority of the litigants or most litigants. As far as the country is concerned, I think, we must endeavour to make the judicial system self-paying. It should pay for itself and not be a burden on the whole country. After all, we know that litigation is largely a sport of the rich. As hon. Justice Mishra pointed out a few minutes ago, there are advocates who charge Rs. 1 lakh as fee for appearing one in a case. No poor man or even a middle class man can afford Rs. 1 lakh fee for an advocate for one appearance. So, the sport of the rich, particularly civil litigation, can as well be paid for by the rich and not be a burden on the whole country. That I feel should benefit the country. Let us take this opportunity of the big jump in salaries that are being offered to Judges and justify this jump in trying to move towards a system which will bring benefit to both litigants and the people.

I think making individuals accountable is all right. They should be made accountable because there was considerable discussion on this subject. But I think what we need to do is to look into it from a systemic point of view. After all, it has gone on for 100 years. There is a saying, "Justice delayed is, justice denied." Now, we can also add to it, "Justice delayed is, justice destroyed." Recently we have heard about a case in Mumbai. Apparently it is quite a popular case where it started about 100 years ago over a small property matter in the city of Mumbai. A lawyer took up this case. Let us call him a grandfather. He died and passed on the case to his son who was also a lawyer. The son also died. Let us call him the father. He passed on the case to his grandson. The grandson died several years ago. The case is lying in some higher court and not the small causes court. God knows, what has happened to the litigants. I am sure all of them must be dead. This is called justice delayed is justice destroyed. The case was never concluded. Of course, as rightly mentioned by the hon. Member, Shri Das Gupta, there are many cases pending. I have got figures with me. There are about 30,00,000 cases pending across all High Courts in India. Out of 30,00,000 cases, 3.75 lakh cases are over 10 years old. Now, the systemic change and accountability are the other sides of accountability. I think adjournments are a great evil. Why is an adjournment sought by a lawyer? It is because the lawyer who is a successful lawyer will be fighting six cases in different courts. So, he casually asks for an adjournment in the court where he cannot attend. Mind you, his client pays for it. Probably, he also pays for his junior. The rest of the court will be wasting its time because some lawyer has sought an adjournment. I think this is very unfair. I suppose, you cannot deny a lawyer the privilege of seeking an adjourment because it will be considered undemocratic. In that case, let the litigants who seek an adjournment pay for it. For the first adjournment let the fee be Rs. 10,000. For the second adjournment, let the fee be Rs. 25,000. These figures do not matter. I am only trying to convey a principle. For the third adjournment, let the fee be Rs. 50,000. *(Time-bell rings)* This is my maiden speech. Please bear with me for a few minutes. I will not take more time.

Now, the other thing I would like to speak about is the evidence in civil cases. Once a witness has written down on a sworn affidavit what he has to say, why should not he be taken seriously? But, no. In our courts, it is customary to call the man again and make him speak in the court itself. This is not done, for example, in Great Britain. They take the affidavits seriously and any lie told in an affidavit is considered perjury. Unfortunately, in our country, we do not take

perjury seriously. That is the second systemic change that I would suggest, that evidence in civil courts be abolished. Here, we will have to cooperate with the Judges and the Judges will have to cooperate with us.

Then, of course, there is the unlimited time taken by some advocates, maybe out of tactics, maybe out of their underestimation of the Judge's capacity to understand their point of view. Whatever the reason, the point is that people go on. I have heard of a case where somebody went on pleading the same case for about 8-10 hours. I do not know whether this is right. But this is possible. I feel, again, let them pay for the extra time. Let the Judge decide at the beginning of a case that the time for each advocate will be 20 minutes or half an hour or one hour or whatever; and thereafter, if you want to argue longer, pay for it. This is the way to try and make the judiciary self-paying which is what I began with.

Then, of course, you have these appeals, layer upon layer of appeals. One Judge hears a case; then in the same court, a Division Bench hears the case; and possibly, in some cases, a third Full Bench of the same court hears the same case all over again. This has to go. I feel that on facts, there should not be more than one appeal and thereafter, appeals should lie only on essential points of law.

There are many other suggestions that could be made. But, in view of your impatience, Mr. Vice-Chairman, I shall not take any more time except to say once again that I would like to point out that I have not forgotten the poor man. The poor man cannot contribute towards the self-paying judicial system. For him, let him write an affidavit, witnessed by his neighbours, that he cannot afford a case that has been imposed on him. Let us say a rich landlord harasses a poor tenant. Let the poor tenant give an affidavit that he cannot afford to pay the court fees. And he can be exempt. Against that affidavit, exempt him from paying the court fees. But let the rich go on paying more and more as they wish to indulge in their sport of litigation.

Having said that, Sir, I once again say that I support the Bill and thank you very much for your indulgence.

SHRI ASHOK MITRA (West Bengal): Mr. Vice-Chairman, Sir, it is now 51 years since Independence. And it seems that we have very comfortably forgotten one of the major planks of the freedom struggle which was to fight against the Ordinance Raj which was introduced by the British. of course, we were subjugated. To add insult to injury, there was this make-belief of a legislature that did not care even to go through the processes of the legislature to pass an Act. They would continuously lean on announcing one ordinance after another. So, were are in the tradition of the British. We are, at heart, truly British and therefore we have decided that we will follow the principles of one ordinance after another.

Let me repeat what another Member had said a while ago. What exactly was the rationale of this Ordinance? The Government took a decision with respect to the Central Government employees in September, 1997. The Government could not take a decision with respect to the higher judiciary till April, 1998. But finally, a decision was taken in April, 1998 which was exactly two months away from the date of resumption of Parliament. What the Government could have done is to write a letter that they have taken the following decision which will be implemented retrospectively from January, 1996 through a piece of legislation which will be moved in the two Houses of Parliament as soon as Parliament assembles.

I do not think that our judges are defenders of law. They are not defenders of antilaw. They are not defenders of arbitrariness. They would have preferred that their emoluments were raised through a proper law instead of by way of an Ordinance, One can go and lobby in private with the judges what their reaction is. But I think that has become a

habit-forming with some administrative departments to think that without an Ordinance, there can be no law. This has become a normal practice to first issue an Ordinance, then take a good time, convert that Ordinance, into a Bill and come before the Parliament. That has put the entire constitutional process topsyturvy. I am tremendously in an advantageous position because my party will never form a Government in this kind of set-up. But those who have formed the Government would kindly bear in mind that what they are doing amounts to betraying the very traditions of our independence struggle. That is one thing. Certainly, the judges have to be given increased emoluments because the Government is not in a position to control the price level. It is a good thing that through this process of legislation, the Judiciary will receive higher salaries and allowances. I am not at all interested in the metaphysics of whether the judges are getting 3,000 rupees more or less than some Secretary to the Government of India. In the private sector, you have allowed unfettered freedom to fix salaries at any level. The sky is the limit. Why should I bother whether any particular civil servant or a particular member of the judiciary is within the hundred metres race? It is not something which ought to detain us. But there is another issue, the issue of whether the kind of decision that we are going to take today would improve the quality of justice and speed up the process of judicial operations. This is something about which I think we should think a little bit more. Now, is it enough to raise the salaries and emoluments of the superior judiciary and worry only about what is happening to them? What about the ordinary judiciary? It will be said that it is for the State Governments to adjust upwards what the lower level of the judiciary receive. In any case, some of the problems have been taken care of by the decision with respect to the salaries and allowances of the Central Government employees. Let me make this point. Yes, somebody did mention that when the cost of living goes up, the Supreme Court and the High Court Judges suffer. But let me say that when the cost of living goes up, ordinary people in the country and the junior members of the Judiciary suffer much more than the High Court and the Supreme Court Judges and if there is going to be any bias introduced, kindly do so in a manner so that the rate of increase in salaries and allowances for the lower level of Judiciary is higher than what you have granted to the superior judges. The second point is that in addition to adjusting upwards the salaries at a lower level, kindly also see that they are offered some better accommodation at that level. Justice Ranganath Misra did mention the point that a judge needs a certain milieu, a certain ambience and a certain quiet around him before he can really exercise his judicial mind. This is equally true for the lower judiciary, and unless the Government takes some steps for building very extensively accommodation for them, I think, they will be in a very difficult position. But I have a final point to make and that is, as you know, we have a Constitution and we have a whole structure of laws, and we assume that the judicial system will see to it that the Constitution is applied strictly, the rule of law is followed minutely. But you know that in the class-ridden society that we have, there are two systems of law, one for the comfortably placed, and another for those who cannot afford it. Now look at what has happened to Article 226. Article 226 was introduced in the Constitution in order to protect the weak against the monstrosities and the excesses that could be committed by the strong. Our Constitution, through this Article, made a commitment that the poor and the weak would have safeguards from State against any kind of injustice, inequity that could be thrust upon them. You just take a cross section of any judgement, you see the kind of injunctions that are moved before the High Court and you will find that in the majority of the cases, it is the strong who are seeking protection against the weak. You pass a law for protecting a tenant from the clutches of a landlord or for protecting a

small farmer or a share cropper from the clutches of a landlord. You will find that when a rich fellow approaches the judiciary, invariably the judgment goes in his favour. This has been brought about because none of us in Parliament can do anything about the structure of class diversification that we have. And I am under no illusion. We may place on record our concern about what is happening, and we may keep protesting. But, with all the correctives that will be introduced in the salary structure, the poor can be protected only through active mobilisation of their strength and in the interim, we would keep using the judiciary to our advantage to the extent it is possible to do so. Thank you.

श्री ईश दत्त यादव (उत्तर प्रदेश): माननीय उपसभाध्यक्ष जी, सुप्रीम कोर्ट तथा हाई कोर्ट के न्यायधीशों की सेवा शर्तों एवं उनका वेतन बढ़ाने के संबंध में जो विधेयक प्रस्तुत किया गया है, मैं इसके विरोध में नहीं हूं, मैं इसका समर्थन करता हूं लेकिन मान्यवर, मुझे यह आशंका है कि सरकार की जो स्थिति है और देश के अंदर जो महंगाई बेतहाशा बढ़ रही है, उसे देखते हुए सरकार को हर 6 महीने के बाद जजिज़ की और दूसरे अधिकारियों तथा कर्मचारियों की तनख्वाहें बढ़ानी पड़ेंगी। वित्त मंत्री जी यहां थे, चले गये हैं, उन्होंने सदन में स्वीकार किया था कि इस देश में महंगाई बढ़ रही है और यह फैक्ट भी है, सही भी है, मैं इसके ज्यादा विस्तार में नहीं जाना चाहूंगा क्योंकि समय कम है, जीवनोपयोगी वस्तुएं, खाद्यान्न पदार्थ तथा अन्य सभी चीजों की कीमतें आसमान को छू रही हैं। यह वेतन वृद्धि इसलिए की जा रही है, सुविधाएं इसलिए बढ़ायी जा रही हैं कि जज लोग सम्मानजनक जीवन-यापन कर सकें, परिवार से निश्चिंत रहें और निष्पक्ष तथा स्वतंत्र होकर न्याय दे सकें, इसलिए मैं इस बिल पर कुछ कहने से पहले सरकार से कहना चाहता हूं कि सरकार महंगाई पर रोक लगाए वरना चाहे जितनी भी तनख्वाहें बढ़ायी जाएं, समस्या ज्यों की त्यों बनी रहेगी, माननीय उपसभाध्यक्ष जी, श्री रंगनाथ मिश्र जी बहुत विद्वान आदमी हैं, इस देश के सर्वोच्च न्यायालय के मुख्य न्यायधीश रहे हैं — मैं जानता हूं और मैंने उनके निर्णयों को भी पढ़ा है — मैं हृदय से उनका सम्मान करता हूं, बहुत अच्छी बातें उन्होंने कही हैं लेकिन एक बात से मैं सहमत नहीं हूं। उन्होंने कहा कि वकील, जो पैरवी करता है, वह एक दिन का एक लाख पाता है और जज कम पाता है। मान्यवर, मैं आपके माध्यम से माननीय रंगनाथ मिश्र जी से निवेदन करना चाहूंगा कि वकील और जज की जिम्मेदारियां अलग-अलग होती हैं। हालांकि दोनों न्याय देने और दिलाने में सहायक होते हैं पर वकील को पैंशन तो नहीं मिलती है, वकील जिस दिन छुट्टी पर होता है, उस दिन वह वेतन नहीं पाता है। इसी तरह सुप्रीम कोर्ट दो महीने बंद रहती है पर फिर भी जजिज़ को तनख्वाह मिलती रहती है, वकील को नहीं मिलती है। तो इस आधार पर जज का वेतन बढ़ा दिया जाए कि वकील एक लाख वेतन पाता है इसलिए जज का भी वेतन बढ़ाया जाए, इस बात से मैं सहमत नहीं हूं क्योंकि दोनों के कार्यक्षेत्र अलग-अलग हैं। महोदय, इस देश में आय के अनेक साधन होते हैं। लेबर क्लास का पैसा कमाने का तरीका अलग होता है। वकील का, अध्यापक का, सबका पैसा कमाने का तरीका अलग-अलग होता है। इसलिए इस बेसिस पर कंपेयर नहीं किया जाना चाहिए। यह सही है कि जज सर्वोच्च स्थान पर बैठता है। मैं जानता हूं, मैं उत्तर प्रदेश का हूं और मेरे उत्तर प्रदेश में अच्छे वकील लोग जो महीने में कई लाख रुपया कमाते थे, वह हाई कोर्ट के जज हो गये। किसलिए जज बन गये? इसलिए नहीं कि उनके मन में पैसा कमाने की लालसा थी इसलिए कि ऊंची कुर्सी पर वह बैठना चाहते थे। जज को जो सम्मान मिलता है, उस सम्मान के लिए वह वहां जाते हैं न कि पैसा कमाने के लिए। इसलिए वकील को जज के पद से कंपेयर नहीं करना चाहिए। मान्यवर, मैं ज्यादा नहीं कहूंगा, केवल तीन-चार सुझाव देना चाहता हूं। एक तो हाई कोर्ट और सुप्रीम कोर्ट में मुकदमें ज्यादा लम्बित पड़े हुए हैं, दस साल से ज्यादा पुराने मुकदमें पड़े हैं, 15 साल और 20 साल के भी मुकदमें पड़े हुए हैं। मैं इलाहाबाद हाई कोर्ट के बारे में थोड़ी जानकारी रखता हूं कि वहां पर 15 और 20 साल के मुकदमें पड़े हुए हैं। इसलिए सरकार को इस पर गंभीरता से विचार करना पड़ेगा क्योंकि जब 20 साल तक मुकदमें लम्बित पड़े रहेंगे, निर्णय नहीं होगा तो उस आदमी के भाग्य का क्या फैसला हो सकता है? इसलिए सरकार को इस पर गंभीरता के साथ विचार करना पड़ेगा। सरकार की तरफ से यह कहा जा सकता है कि अभी जजिज़ हमारे पास नहीं हैं इसलिए कानून मंत्री जी से मैं कहना चाहूंगा कि अगर सुप्रीम कोर्ट और हाई कोर्ट में जजिज़ के स्थान खाली पड़े हुए हैं तो उनको तुरंत भरने का काम कराइए। मेरा दूसरा सुझाव यह होगा कि आज हाई कोर्ट और सुप्रीम कोर्ट में मुकदमों की संख्या को बढ़ रही है इसलिए हाई कोर्ट और सुप्रीम कोर्ट के जजिज़ की स्ट्रेंथ पर गंभीरता से बिचार करके

इनकी संख्या बढ़ाना चाहिए। इसलिए आपके माध्यम से मैं यह अनुरोध करूंगा कि सरकार इस पर विचार करके सुप्रीम कोर्ट और हाई कोर्ट के जजिज़ की संख्या को जरूर बढ़ाए वरना यह मुकदमें इसी तरह से अनिर्णीत पड़े रह जाएंगे और लम्बे समय तक उनका कोई निपटारा नहीं होगा। तीसरा मेरा सुझाव यह है कि जजिज़ की चयन प्रणाली पर भी सरकार को गंभीरता से विचार करना चाहिए। मैं इसके भी विस्तार में नहीं जाना चाहता हूं पर मैं यह कहना चाहता हूं कि जो जजिज़ की चयन प्रणाली है। उसमें जजिज़ को मजबूर होना पड़ता है, वह निष्पक्ष नहीं रह पाते हैं। इस देश के जज निष्पक्ष रहें इस पर गम्भीरता से विचार करना पड़ेगा। चाहे इसके लिए आप आयोग बनायें, चाहे इसके लिए चयन बोर्ड बनायें, चाहे जो भी व्यवस्था करें, इस पर विद्वान लोगों की, विधि-वेत्ता लोगों की, देश के प्रबुद्ध लोगों की राय लें और कमेटी बनायें। आप जजिज़ की नियुक्ति के संबंध में एक नया कानून बनायें ताकि चयन होकर जो जजिज़ जाएं वह किसी के प्रेशर में आ कर के काम न करें, किसी के दबाव में आकर के काम न करें बल्कि वह निष्पक्ष होकर के काम करें। आप मान्यवर बराबर इशारा कर रहे हैं। हम ज्यादा नहीं बोलेंगे।

उपसभाध्यक्ष (श्री सनातन बिसि) आपकी पार्टी के एक और सदस्य ने बोलना है।

श्री ईश दत्त यादव: मान्यवर, जुडिशियरी, एक्जीक्यूटिव और लेजिसलेचर तीनों प्रजातंत्र के मजबूत अंग है। अगर तीनों में एक भी न रहे, एक भी कमजोर हो जाए तो देश का प्रजातंत्र चल नहीं सकता है, मजबूत नहीं रह सकता है और देश आगे नहीं बढ़ सकता है। इसलिए मैं आपके माध्यम से कानून मंत्री जी से निवेदन करूंगा कि आपके तो अधिकार सीमित हैं, आप लोगों की तो लड़ाई भी चल रही है, पता नहीं क्या होने वाला है, आगे क्या हो जाएगा? लेकिन मैं आपके माध्यम से कहूंगा कि आप हमारी भावनाओं को सरकार तक पहुंचाएं कि केवल जजिज़ का ही वेतन बढ़ाना काफी नहीं है, एक्जीक्यूटिव का भी वेतन बढ़ाना जरूरी है और जो लोग लेजिसलेचर में काम करते हैं, चाहे वह विधान मंडल में हों, चाहे राज्य सभा में हों, चाहे लोक सभा में हो। अब प्रस्ताव आया...

उपसभाध्यक्ष (श्री सनातन बिसि): हो गया।

श्री ईश दत्त यादव: मान्यवर, हम डिस्टर्ब हो जाते हैं जब आप... **(व्यवधान)**...

उपसभाध्यक्ष: (श्री सनातन बिसि): नहीं-नहीं, आप सुनिए। आपकी पार्टी के नये मेम्बर को भी बोलना है।

श्री ईश दत्त यादव: उनको बोलना है तो आप उनको टाईम दीजिएगा। मैं आपसे रिक्वेस्ट कर रहा हूं, मैं आखिरी बात कह रहा हूं, कोई ज्यादा थोड़े ही बोल रहा हूं।

उपसभाध्यक्ष (श्री सनातन बिसि): आप बोलिए।

श्री ईश दत्त यादव: अभी मिश्रा जी कम्पेयर कर रहे थे कि जो केबिनेट सेक्रेटरी है वह 30 हजार रुपये ले रहा है और जो हाई कोर्ट के जजिज़ हैं उनको भी 30 हजार रुपये दिए जाएं। जो एक्जिक्यूटिव में काम करते हैं और हम लोग जो लेजिसलेचर में काम करते हैं क्या हमारे लिए महंगाई नहीं है? क्या हमको सम्मान-जनक जीवन बिताने की इच्छा नहीं है? हाई कोर्ट के जजिज़ की सैलरी रहेगी 30 हजार रुपये और माननीय संसद सदस्य की सैलरी रहेगी डेढ़ हजार रुपये तो इसमें कहीं तो कोई तालमेल होना चाहिए। मैं फिर दोहरा रहा हूं कि लेजिसलेचर, एक्जिक्यूटिव और जुडिशियरी तीनों के समान कर्तव्य हैं, तीनों के समान अधिकार हैं, अधिकारों में हो सकता है कि मतभेद हों, लेकिन तीनो मिल कर के इस देश को चला रहे हैं और इस देश के प्रजातंत्र को चला रहे है। इसलिए मैं पुनः आपके माध्यम से माननीय कानून मंत्री जी से कहूंगा कि आप हमारी भावनाओं को सरकार तक पहुंचा दें और सरकार पता नहीं कब तक चलेगी? अगर सरकार इस पर थोड़ा कुछ करे तो वह थोड़ा यश लेकर चली जाएगी। बहुत-बहुत धन्यवाद।

श्री गोविन्दराम मिरी (मध्य प्रदेश): हमारी सरकार चलेगी। आप चिन्ता मत कीजिए।

उपसभाध्यक्ष (श्री सनातन बिसि): हो गया, हो गया। श्री हंसराज भारद्वाज।

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): Sir, I would like to remind the House that we have always supported unanimously, the High Court and Supreme Court Judges (Conditions of Service) Bill whenever it is borught before the House. The tradition is judiciary does not speak for its perks. This House has always granted these facilities, enhancement of salaries, etc. without much debate. I am not one of those who say that the Ordinance should not have been brought. Actually, it should have come much before elections. Every Judge was anxious to know as to what will happen to his salary. As a matter of fact,

this ordinance was long overdue because Judges were drawing less salary than the Private Secretaries. Therefore, I welcome the Minister for bringing it at the earliest possible. Had this Ordinance been promulgated earlier, it would have been of use.

I would like to put the records straight. There was no Ordinance before the elections. I had been communicating with the Minister. I asked, "What are you doing in regard to the conditions of service of Judges?" He said, "Perhaps the Cabinet has not cleared it or it has been struck up somewhere".

But we are actually in time. This should be done because, after all, judges should not have a feeling that they are not being cared for. They are the persons who adjudicate disputes between citizen and citizen and Government and citizens. Therefore, it is our responsibility to see to it that they have a comfortable living, they hvae comfortable court-rooms, they ahve comfortable transport, they have holidays, they have LTCs and they have whatever facilities we can give them taking into consideration the economy of our country. I certainly feel that all Government have been doing whatever was necessary to be done. I have communicated with almost 10 Chief Justices. It is the tradition that before bringing in any law, a Law Minister should informally consult the Chief Justice of India who is the head of the judiciary. You cannot consult every judge. But whenever a Law Minister goes in for any measure in support of judiciary, you cannot downgrade anything what the judiciary has got already because the Constitution prohibits such a thing. When we implemented the Fourth Pay Commission, I had discussed with Chief Justice Bhagwathi. He gave a computer print out of everything and these were implemented in addition to providing one more LTC. We have already brought judiciary much higher than the executive. Judges are entitled to three LTCs whereas Civil servants do not get three. We give free transport to them. Earlier they were getting Rs. 500 as allowances. But the then Prime Minister, Shri Rajiv Gandhi, said, "No, judiciary must be given more respect. Give them a comfortable transport, free transport, chaffeur-driven cars with 150 litres of petrol free." They are also entitled to Type-8 houses. The judges of the Supreme Court get water and electricity free of cost. And judges of High Courts are being given specific quantity of water and electricity free, which is much more than what MPs get. So, time and again, reviews have been done and I am proud to say that this has been the tradition of all Governments. Our Finance Minsiter, Dr. Manmohan Singh, also was very kind. He never opposed any measure relating to judiciary. We have rated judiciary different from executive or legislature. When I was the Law Minister, I gave Rs. 4,000 tax-free Sumptuary allowance to the Chief Justice of India. This was just before the Fifth Pay Commission recommendations were implemented. Of course, there was some resistance from civil servants. At that time, the Chief of the Army Staff was getting much less. I requested the then Prime Minister that we should treat the Chief of the Army Staff differentially. At that time we enhanced the salaries of three Constitutional functionaries and the Army Chief. The CAG also perhaps was given Rs. 9,000. But the UPSC Chief was not given this increase. We have been doing this service making it as a commitment to better judicial functioning in the country. Judiciary has been doing wonderful work. The quality of public life has been improved by our judiciary. If there is a fall here, there is a fall outside. If there is a fall in the executive, the legislature equally suffers. There is, of course, a fall in general performance of institutions. But that is for us to deal with. But whenever a Government does anything for judiciary, take it that it comes after deliberations. I was in England last week. The House of Lords' Judges were travelling by tube. I found most of the House of Lord' Judges travelling from the House of Lords to Lincoln Inn by tube. Our Judges are

getting free houses. They don't get free houses. Our Judges are getting free transports. The situation can, of course, be further improved. The representatives of the Judges' Association Represetend before the Standing Committee and our Chairman, Shri Pranab Mukherjee, listened to them and all the Members were sympathetic to their problems. Therefore, there is still a need to review whatever facilities can be given by the Government. On this particular occasion I would request the Law Minister to take note of two things. When I was the Law Minister, I was accused of appointing judges in haste. But there is no appointment of judges in the country today. All High Courts have vacancies. UP has 35 vacancies. In my own State, Punjab and Haryana High Court has 25 vacancies. This is seriously affecting the judicial functioning. This House must concern itself with delay in these appointments. Something should be done by you, Mr. Minister, or the Prime Minister. I don't know whether there was ever this type of a deadlock between the judiciary and the executive. There may be accusations against the executive that there were appointments of judges of bad quality. We are capable of refuting these charges. But where should they go? There is total frustration in the judiciary becuase of non-appointment of judges. Some transfers have been suggested. I will not name them. There is no logic in making recommendations to the Supreme Court. The Supreme Court itself took away the power through the 9-Judges' Bench. I was accused by my friend that I had allowed the judiciary to usurp the power. No. It was a good sense and a noble feeling that the judiciary should have a better say in its own appointments. But what a mess has been created now that no two judges agree, even for their own benefits. I would like to utilise the services of our former Chief Justices of India. Please tell them that the country is suffering because of the apathy shown by the judiciary in delivering judgements. Why should there be delay in delivering judgements? The Minister cannot ask the Superme Court Registry why a particular judgment has not been delivered. They should at least look into their conscience; people are watching them. And, there is absolutely no difficulty at all. We had a unanimous resolution at the Law Ministers and Chief Justices Conference that no judgement will be delayed. But nothing has been done. So, whenever there is an informal discussion of the executive on the administrative side, please take it up with them and convey them that we are all united on one thing, this whole House is united, that the administration of justice should not suffer in this country. We will give whatever perks that are necessary and the salary structure of the highest, as Shri Ashok Mitra has also mentioned. I would like to personally request you because I have handled this for a long time. Such a situation had never arisen. There was a deadlock in the appointment of the Chief Justice of India. Why? There is the principle of seniority. So, there should be no more uncertainty. The Chief Justice, who is about to go, tries to hurt the incoming Chief Justice! Is this the judicial tradition? The judicial tradition is to follow the precedence. Therefore, they must be told, both with firmness and politeness equally, that this is the time when the country cannot go on with this type of functioning. The Parliament will certainly not like it. At one point of time, the House of Lords judges came here. The American judges came here. They went back with the impression that the Indian democracy was thriving along with judicial independence. The country has got this type of credit earlier. Why should things go down now? This is your responsibility. Mr. Minister. We wish you good luck in this regard. Whenever you need our support, we will give you, but see to it that this system doesn't come to a grinding halt. There is no difficulty. I will request my Opposition friends also to support it. We know it is a ritual to bring in the resolution disapproving it. Ultimately we always agree. Now, you have brought it on right time and this was the only way. When you have no law, you cannot give salaries to judges. Therefore,

this has been done. I am proud to say this. I worked with this Department. The Department of Justice functions like the staff of Parliament. It is very meticulous. Therefore, you have the best traditons. Please see to it that this deadlock is removed. There are five or six vacancies in the Supreme Court. Why don't you fill them up? You fill them up, whether all the judges have recommended or not recommended. Similarly, you have to do in the case of High Courts. I gave a question and got the answer to the Unstarred Question. There are 150 posts vacant out of a total of 500 and odd posts. One-third of the vacancies are there in the High Courts. There is uncertainty in the minds of the Chief Justices in the country as to where they will go, whether they will stay in the same High Court or they will go out. There are orders of transfer of Chief Justices who were appointed only one or two months ago. This is nothing but callousness. Therefore, I support this measure. I am grateful to you, Sir. You gave me this opportunity. Let us pass it without any further discussion.

श्री रामदेव भंडारी (बिहार) उपसभाध्यक्ष महोदय, उच्च और उच्चतम न्यायालय के जजों के वेतन और अन्य सुविधाओं में विस्तार हो, इसके लिए मैं सरकार से सहमत हूं। रिटायरमेंट के बाद भी उनको इतनी सुविधाएं मिलनी चाहिये कि उन्हें किसी दूसरे के सामने हाथ नहीं फैलाने पड़ें। ऐसी सरकार की ओर से व्यवस्था होनी चाहिये। हमारे कई मित्रों ने हाई कोर्ट और सुप्रीम कोर्ट में लाखों की संख्या में लम्बित मुकदमों के बारे में चर्चा की है, जजों की संख्या बढ़नी चाहिये, इसकी भी चर्चा की है। मैं एक दो बिन्दुओं पर आपका ध्यान आकृष्ट करना चाहता हूं। अभी भी इस देश में गरीबों की भारी संख्या है। मैं महसूस करता हूं कि आज़ादी के 51 वर्ष के बाद भी अभी भी गरीबों को इस देश में न्याय नहीं मिलता है। बिहार में आचार्य विनोबा भावे के भूदान आन्दोलन के द्वारा और सीलिंग से फाज़िल ज़मीन गरीबों को मिली और ज़मीन मिलने के बाद बड़े-बड़े ज़मींदार जिनकी जमीनें ली गईं, उन गरीबों को कोर्ट में घसीट कर ले गए और लोअर कोर्ट से ले कर हाई कोर्ट और कोई-कोई मुकदमा तो सुप्रीम कोर्ट तक ले गए। अब वह गरीब लोग जिन्हें ज़मीन मिलनी थी उनकी क्या स्थिति होगी? ...(व्यवधान)

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Is somebody nothing down the points on behalf of the hon. Minister?

THE MINISTER OF STEEL AND MINES (SHRI NAVEEN PATNAIK): Yes, I am nothing down the points on his behalf.

श्री रामदेव भंडारी: आप सोच सकते हैं गरीबों के पास सरकार के द्वारा दी गई थोड़ी सी जमीन है, वह सुप्रीम कोर्ट तक कैसे केस लड़ेंगे? मैं भी महसूस करता हूं कि ज्यूडिशियल सिस्टम में ऐसा परिवर्तन होना चाहिये जिस के माध्यम से गीरबों को शीघ्र न्याय मिल सके। मैं सरकार से इस बात का अनुरोध करता हूं। दूसरी बात मैं यह कहना चाहता हूं कि ज्यूडिशियरी को सामाजिक परिवर्तन का एक मज़बूत और सक्षम हथियार बनना चाहिये। पूर्व में बड़े-बड़े परिवार के लोग ज्यूडिशियरी में आते रहे, हाई कोर्ट और सुप्रीम कोर्ट के जज बनते रहे। मैं एक ऐसे जज को जानता हूं जो रिटायर हो चुके हैं, उच्च न्यायालय के चीफ जस्टिस हो कर रिटायर हुए हैं। गांव में हरिजनों पर उनके परिवारों की ओर से कई मुकदमे हुए थे। जब वह गांव जाते थे तो डिस्ट्रिक्ट कोर्ट से जुडिशियस आफीसर को बुला कर के कहते थे कि इस मुकदमें में ऐसा करो, उस मुकदमें में वैसा करो, इस तरह का जजमेंट दो। मैं यह चाहता हूं कि गरीब का बेटा भी, शैड्यूल्ड कास्ट, पिछड़े वर्ग का बेटा भी ज्युडिशियरी में जाए, हाई कोर्ट और सुप्रीम कोर्ट का जज बने। बिहार सरकार ने ज्युडिशियरी में आरक्षण की बात की थी, प्रस्ताव रखा था कि ज्युडिशियरी में आरक्षण दिया जाए। मैं मानता हूं कि जब एक शैड्यूल्ड कास्ट राष्ट्रपति बन सकता है, लोक सभा का अध्यक्ष हो सकता है तो हाई कोर्ट और सुप्रीम कोर्ट का जज क्यों नहीं हो सकता? मैं मांग करता हूं सरकार से कि ज्यूडिशियरी में, हाई कोर्ट और सुप्रीम कोर्ट में भी शैड्यूल्ड कास्ट, पिछड़े वर्ग, अल्पसंख्यक लोगों की नियुक्ति होनी चाहिये। जजों की नियुक्ति में उनके सोशल बैकग्राउंड को देखना चाहिये। जो उस सोशल बैकग्राउंड का होगा, जिनके परिवार के लोग गरीबों को सताते रहे हैं, हरिजनों को सताते रहे हैं, क्या उनकी मानसिकता गरीबों को न्याय देने की होगी? इसलिए हाई कोर्ट और सुप्रीम कोर्ट के जजों की नियुक्ति से पहले, उनके सोशल बैकग्राउंड की पूरी जानकारी मिलनी चाहिये, उनकी मानसिकता की पूरी जानकारी मिलनी चाहिये, यह जानकारी मिलनी चाहिये कि उनकी गरीबों के प्रति हमदर्दी है या नहीं है, वह गरीबों की पीड़ा को महसूस करते हैं या नहीं करते हैं।

इस बात पर उनकी नियुक्ति से पहले विचार होना चाहिये। आज से पन्द्रह बीस वर्ष पूर्व ज्युडिशियरी पर कोई अंगुली नहीं उठाता था लेकिन आज हालत यह हो गई है कि ज्यूडिशियरी के खिलाफ भी अंगुली उठने लगी है। इसी हाऊस में ज्युडिशियल एक्टीविज़्म की चर्चा हुई है। हाई कोर्ट और सुप्रीम कोर्ट के जज भी इन्सान होते हैं। वे गलती करते हैं मगर उनकी गलती के लिए उन्हें दंडित नहीं किया जाता है। हमारी गलती के लिए जनता हमें तुरंत दंडित करती है। दूसरी बात हमें वापस नहीं आने देती है। उनके लिए इंपीचमेंट का प्रोविज़न है। उनके खिलाफ इंपीचमेंट किया जाता है। मैं चाहता हूं उनके खिलाफ कोई जुडिशियल कमीशन बनाया जाए। इंपार्शियल इन्क्वायरी हो और इंपार्शियल इन्क्वायरी के बाद अगर वे दोषी पाए जाते हैं तो उनके खिलाफ तुरंत कार्यवाही होनी चाहिए। इस तरह से जुडीशियरी में जो कुछ कमी आ रही है, जो भ्रष्टाचार और पक्षपात की बात सुनाई पड़ती है, उसको दूर किया जा सकता है। निचले स्तर पर तो बहुत ही भ्रष्टाचार है। मैंने देखा है लोअर कोर्ट्स में स्थिति बहुत खराब है। वैसे उनकी सुविधाएं भी बहुत सीमित हैं। उनके रहने के लिए मकान नहीं है। वे कबूतरखाना जैसे घर में अपना कोर्ट चलाते हैं। उनकी भी सुविधाएं बढ़नी चाहिएं। लोअर कोर्ट्स के जो मैजिस्ट्रेट हैं, जुडीशियल मैजिस्ट्रेट हैं, मुंसिफ मैजिस्ट्रेट हैं, उनकी भी सुविधाएं बढ़नी चाहिए।

महोदय, अंत में मैं एक बात कहना चाहूंगा कि जजेज़ के प्रति इस देश के लोगों को अभी भी बहुत सम्मान है। जुडीशियरी से उनकी बहुत सारी आशाएं हैं। मैं चाहता हूं और मैं सरकार से मांग करता हूं, चाहे कोई भी सरकार हो, रिटायरमेंट के बाद उनको कोई पोलिटीकल एप्वायंटमेंट नहीं मिलनी चाहिए। मैं एक बात और कहना चाहता हूं कि नियुक्ति से पहले उनके पोलिटीकल रूझान की जानकारी होनी चाहिए। अगर उनका कोई पोलिटीकल रूझान होगा तो निश्चित रूप से जज होने के बाद हम हंडरेड परसेंट ऐसा विश्वास नहीं कर सकते कि उनका जो रूझान है, उनकी जो मानसिकता है, उसका असर व दखल उनके जजमेंट पर नहीं होगा। इसलिए रिटायरमेंट के बाद उनको कोई पोलिटीकल एप्वायंटमेंट नहीं मिलनी चाहिए जैसे कि गवर्नर जैसे पद पर बना दिया जाता है। हां, यह कर सकते हैं कि जैसे जुडीशियल कमीशन हो उसमें उनको चेयरमैन बनाया जाए, उसमें उनको मैंबर बनाया जाए। लेकिन उनको कोई पोलिटीकल एप्वायंटमेंट रिटायरमेंट के बाद नहीं देनी चाहिए।

इन्हीं शब्दों के साथ, मैं अपनी बात समाप्त करता हूं। बहुत-बहुत धन्यवाद।

SHRI L.M. SINGHVI (Rajasthan): Sir, I make my maiden speech 36 years after I made my maiden speech in the other House. I am happy that I am doing so on the same day as the hon. Member from Orissa, Shri Ranganath Mishra. I have spent all my life in law and I believe that this Bill deserves to be welcomed across and beyond party-lines. There are matters where we are all one. There are matters which transcend party boundaries and, I think, Mr. Vice-Chairman, Sir, it is important for us to recognise that the Bill has not come a day too soon. It is something which was necessary to be done not so much because I would wholly link integrity and independence of judges with what they are paid as Shri Ranganath Mishra seems to do but because it is what we owe to our judiciary & to the sustem. A civilization is judged by the measure of respect it shows to its judiciary. The system is judged by the respect the judiciary enjoys in a system.There is no doubt, as many hon. Members have said, judicial independence is to be matched with judicial accountability. There is no institution in a democracy which is beyond accountability. But judicial Accountability is of a different nature. Accountability of civil servants is of a different nature. Accountability of Members of Parliament is of a different nature. Accountability of Ministers is of a different nature. Accountability of judges is also of a different nature. That accountability is to the Constitution, to the norms of the Constitution, to the views which well-informed individuals in the law uphold because, ultimately, I may say so, the Bar is the ultimate judge of judges. I heard in this House to-day that lawyers make a lot of money and judges do not. I quite accept that stark reality but I should repeat what I had said to one of the distinguished predecessors of the hon. Member from Orissa, who made it a week-end habit of saying exactly that ad hanseum. I told him. It is true that we

lawyers make a great deal of money, more money than judges do. He said to me that judges are paid in a whole year what lawyers in certain brackets may be paid in two weeks or a month. I told him, "It does not come well from you. We all make our choices. We make our choices on various considerations. One should not wallow in retrospective regrets". But, that is not to say that we can allow any neglect of our judges or the judiciary. The judiciary has to be looked after well in all respects. We have to give them the respect that is due to the judiciary. We must make sure that the independence of the judiciary is safeguarded and the dignity of the judiciary is safeguarded. That can be done when the best possible appointments are made. And the best of the appointments can only be made when there are reasonably attractive emoluments, there is reasonable security and there is reasonable dignity given to them in the system. It seems to me that if the quality of judicial performance has declined—and I am free to say so for this is the truth I am sure my hon. friend, the hon. Member from Orissa, will agree with me—it is partly because there has been a reluctance of the best lawyers to be elevated as Judges.

There has been a lack of judicial orientation and training system. There has been a lack of inputs in our judicial and legal system.

We must also accept the fact that arrears are mounting up to a degree where courts are so burdened that no judge, no individual can perform his or her duties in a proper and adequate manner. There has to be a very comprehensive study of as to what are the needs of our judicial system. There has to be a comprehensive study of how many judges we need in different places, how matters have to be dealt with and how we the Parliament observe standards of celibacy in the matter of legislating.

[The Vice-Chairman (Shri Md. Salim) *in the Chair*]

I think we have to remember that the Parliament has gone on legislating in a way which makes most of that legislation meaningless because we never know as to how exactly it has been implemented. We must clear our Statute Book of a whole lot of old laws inherited from the days of the raj and which were enacted in different circumstances. It is time that we took care to examine the whole Statute Book from the point of view of making it a little more slim, a little more muscular, a little more efficient and streamlined.

It is true that there is an enormous amount of the politics of the judiciary. This is a word which I am borrowing from a very distinguished professor of the London School of Economics, a very dear friend of mine, Prof. Griffith. He wrote a whole book on the subject. The politics of the judiciary can undermine the credibility of the system. I think it is important for us to bear in mind the instances and episodes which bring to light certain internal differences of a nature which do no credit to the individuals who hold office and do not add to the dignity of the judiciary. Our judicial institutions are generally honoured, extolled and held aloft as an example. It is therefore important for us to remember that judiciary as a segment of the system must address these issues itself and address them in such a way that these problems can be resolved. I would like to suggest that the constitution of a judicial apointments council in the country should be considered. The hon. Member, Shri Bhardwaj, mentioned the judgement of the nine judges. I do not see how the judgement can be said to be in consonance with the provisions of our Constitution and the basis on which our Constitution was made. It was meant, however, to achieve a certain measure of independence for the judiciary and to exclude the Executive from participating in judicial appointments. Perhaps that is as well. But, I think it is important that the consultative

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process should be enriched and that the consultative process should be more transparent. I think, I would like to reiterate, the suggestion I had made way back in 1972 for a Judicial Appointments Council which may perhaps be an answer, institutionally speaking. I would like to speak of what has been mentioned just now by an hon. Member from Uttar Pradesh who said that we ought to have reservations in the judiciary. It seems, it is a very difficult subject to deal with because reservations are at large. We are surrounded by a climate of reservations. I would like to remind hon. Members that there have been many distinguished members in the judiciary at the highest level who came from different communities and classes including Backward Classes, Scheduled Castes and Scheduled Tribes. I should remind the House of what one of them told me: "I would not like to be a member of the apex court merely because I belong to a particular community. I come here on my merit and that is how it should be." I think, it is important to remember that there are certain segments in which we should look for Constitutional ideology and not a caste ideology. We should look for a certain merit-principle rather than a principle of providing berths for this or that community.

It seems to me that erosion of credibility is an issue which should be addressed, first and foremost, by the judiciary itself and by the bar in a big way. I am sure that our judiciary, our bar, are capable of addressing these questions, if only they become aware that on this depends the future of our Republic, the future of the rule of law in this country.

There should be, in my opinion, a Standing Committee to consider the emoluments of judges and others in high echelons. There is such a Committee in Great Britain. It keeps in touch with what is happening around so that we do not have to wait for several years or a whole decade or several decades to make revisions which become necessary in a much shorter span of time. I was a Member of a Parliamentary Joint Committee way back in the Third Lok Sabha. At that time, we were only trying to raise the age of retirement of High Court Judges to 62 years. We were trying to improve the emoluments of judges because we felt that it was necessary. It did not happen easily. Now, it is happening more easily because in the country there is a greater recognition of the very valuable services that the judiciary renders to the system. I think, a Standing Committee which is able to index salaries and emoluments of the judiciary would be a good way of looking after our judiciary with respect and without their having to make any demand, without their having to make any noises. We cannot afford delays to be chronic. It seems to me, however, that in disposing cases delays have become the greatest black mark in the book of judiciary. Today, no one knows as to when a matter would finally be determined and decided. This brings the whole system into disrepute. There is no point in having any litigation of which one cannot see the end. It is important for us to consider what can be done. The Supreme Court has taken some measures but those measures have not percolated to High Courts. The High Court of Allahabad, for instance, has the highest backlog of cases which are awaiting to be dealt with. Other High Courts are also in a similar position.

I would like to end my remarks by making a submission that in the judicial system we need an enormous amount of scientific management today. It is no longer possible for us to go on on the basis on which we have. There was a time when the Supreme Court used to meet in a part of this very building and the judges used to wait for cases to come in. These were leisurely times. Today, all courts are congested. The courts have not got the time. Judges have no leisure, to study and reflect. After all, the profession of law is a learned profession and a learned profession requires a certain amount of leisure and a certain amount

of application of mind. How can you get a quality judgment if you are unable to provide the time? How can you get a quality judgement unless you are able to locate the best people on the Benches? It is important for us to improve the quality of legal education. We did establish a National Law University in Bangalore with the initiative of the Bar Council. But, that is only one institution in the whole country. We need many more. We need to improve the quality of bar and its training. We need to improve the quality of judges and for that we have to keep in mind the best of what is happening in the world so that our democratic system is not left behind. Sir, I am very happy to be able to participate on the very first day and to pray for the success and improvement of our legal System.

SHRI SANATAN BISI: Sir, I welcome the Bill. While we are talking about delays in the administration of justice, it is there in the newspapers that the Supreme Court, the apex court, has reduced the pendency of cases in the last three years from 1,34,000 to 22,000.

It is a welcome thing that the Supreme Court has done. They have introduced administrative reforms through computerisation in case-taking methods. We should appreciate these measures taken by them for purposes of early redressal. Then, the Law Commission of India in its 121st report had recommended the setting up a commission for appointment of judges. I urge the Government that this Commission should be set up as early as possible. We must appreciate on this occasion the Supreme Court's directive regarding right to an adequate environment because human species exist on this planet without proper environment. So, with these words, I support the Bill.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Thank you, Mr. Bisi. Your party had been allotted two minutes' time and you have finished in one minute. I think, others will also follow this example. Now, Shri Gaya Singh. In your case also your party has been allotted two minutes.

श्री गया सिंह (बिहार): उपसभाध्यक्ष महोदय, मैं इस बिल का समर्थन करते हुए आपके माध्यम से सरकार का ध्यान आकृष्ट करना चाहता हूं कि आजादी से पहले इस देश में एक कहावत थी "कि कुछ लोगों की तकदीर भगवान ने पारकर पैन से लिख दी है, वे और उनका खानदान हमेशा आगे ही बढ़ेगा और कुछ लोगो की तकदीर भगवान ने लोढ़ा से लिख दी है, वे गरीब रहेंगे, खेत मजदूर, दलित रहेंगे, उनके परिवार और सारे लोगों को कुछ नहीं मिलेगा।" तो यह 30,000 या 33,000 कुछ नहीं है, उसका हम पूरा समर्थन करते हैं लेकिन सरकार को सोचना चाहिए कि खेत मजदूर को 40 रुपए भी नहीं मिलते हैं। असंगठित मजदूरों को 40 रुपए प्रतिदिन और केबिनेट सैक्रेटरी और दूसरे सिविल सर्वेन्ट्स व जजों को 33,000 और बंगला, गाड़ी, नौकर-चाकर, सब कुछ फ्री! अभी भाटिया साहब बोल रहे थे कि जब जज जाते हैं जिले में तो पूरा जिला, जिला कलैक्टर से लेकर हर कोई, सब काम छोड़कर उनकी सेवा में लग जाता है, उनका पर्यटन, राहगीरी, सब कामों में सब लोग लगे रहते हैं। तो जो इस देश के 50 परसैंट से ज्यादा गरीबी की रेखा से नीचे रहने वाले लोग हैं, उनको आप और कहां ले जाना चाहते हैं? हम लोग तो समर्थन कर रहे हैं लेकिन इस देश की जनता देख रही है कि हम तो 40 रुपए रोज़ लेते हैं और ये लोग 1200 रुपए रोज़ लेते हैं? तो आज यह जो फर्क हो रहा है देश में, सरकार को इस पर भी सोचना चाहिए। आज बिहार में 18 साल से ज्यादा हो गए पंचायत का चुनाव हुए, 5 साल से ज्यादा वह कोर्ट में पेंडिंग है। आपने गांव का न्यायाधीश बनाया सरपंच को, उसका अभी तक चुनाव ही नहीं हो रहा। सुप्रीम कोर्ट में टैक्निकल मामले के कारण वह एक साल से ज्यादा पेंडिंग है। गांव में न्याय कौन देगा? सुप्रीम कोर्ट नहीं देगा, वहां तो लाखों-हजारों केस पेंडिंग हैं, एसेंशियल केस भी पेंडिंग हैं। मेरा कहना है कि जितनी वेकेन्सी हाई कोर्ट या सुप्रीम कोर्ट में हैं, उनको फिल करना चाहिए।

आपको ध्यान देना चाहिए कि सुप्रीम-कोर्ट और हाई कोर्ट के जजों का वेतन तो आपने बढ़ा दिया लेकिन मुंसिफ मजिस्ट्रेट का क्या होगा? अगर आप जुडिशियरी को काशन से अलग रखना चाहते हैं तो आप मुंसिफ मजिस्ट्रेट से लेकर ऊपर तक उनको तमाम सुविधाएं दीजिए और उनकी बगल में विजिलेंस और सी०बी०आई० को रखिए। यह भी करने की जरूरत पड़ेगी देश में। हमारी नज़र से वे बच सकते हैं लेकिन आम जनता की नज़र से नहीं बच सकते और लोग उनको देखते हैं।

उपसभाध्यक्ष महोदय, चूंकि आपने मुझे बोलने के लिए 2 मिनट का समय दिया है, इसलिए मैं आपका ज्यादा वक्त नहीं लेना चाहता। अंत में, मैं यह कहना चाहता हूं कि इस बिल का हम समर्थन करते हैं लेकिन जैसा कुछ और लोगों ने कहा कि और चाहिए तो और पहले गरीबों को दीजिए। उनकी मजदूरी 40 रुपए से 100 रुपए प्रतिदिन कर दीजिए। उसके पास झोपड़ी नहीं है, रहने के लिए घर नहीं है, सड़क पर वह सो रहा है लेकिन फिर भी देश की सरकार की उसकी ओर नज़र नहीं जाती। इसलिए मैं पूछना चाहता हूं कि उन गरीबों का न्याय कौन करेगा? इसलिए मैं निवेदन करना चाहता हूं कि आज जो विषमता इस देश में बढ़ रही है, बेरोजगारी बढ़ रही है, गरीबी बढ़ रही है, उस पर भी सरकार को ध्यान देना चाहिए, इस तरह की चीजों को तय करते समय।

धन्यवाद।

SHRI S. SIVASUBRAMANIAN (Tamilnadu): Mr. Vice-Chairman, Sir, it is a golden opportunity of my life to address this august House. I thank my leader Shri Kalaignar. With great pleasure, I support the Bill for revision of salaries of the judges of the Superme Court and High Courts. Their salaries should be further enhanced. After decades their salaries have been enhanced. We suggest that the salaries should be raised at least once in five years, keeping in view the inflation. Moreover, the supreme changes that the world has experienced in all spheres had warranted for a new look towards management of judiciary as a whole. All the judges should be provided equipments like information & technology, etc. to enable them to enhance their efficiency. Pending cases have become perpetual in our country. Since the judiciary is one of the four pillars of democracy, we have to consider the issue very seriously. As our former Chief Justice noted, if a judge is elevated or transferred to other High Courts, he should be given sufficient time to deliver judgement in the pending cases. I request the Government to set up a Bench of the Supreme Court in Chennai, as Tamil Nadu Government has proposed to set up a Bench of the High Court at Madurai for speedy disposal of cases and to save time. As has been pointed out by other Members also, I request that the communal G.O as adopted in Tamil Nadu may be implemented. Thank you very much, Sir.

SHRI N. THALAVAI SUNDARAM (Tamilnadu): Sir, I thank you for giving me this opportunity to speak on this Bill. As far as our party is concerned, we welcome this Bill and we also support this Bill, that is, to raise the salaries of judges from Rs. 10,000/- to Rs. 33,000/-, from Rs. 9,000/- to Rs. 30,000/- and from Rs. 8000/- to Rs 23,000/-. The amount being given is very meagre as per our country's position. So, I request the hon. Minister to increase it to at least Rs. 50,000/-.

My point is that if you are going to increase the salary of the judges then what about the pension of the retired Judges? My learned friend Mr. Mishra and other friends are asking for increasing the pension of the retired judges. We should keep the judiciary independent. In the State of Tamil Nadu, the High Court Judges do not have proper accomodation. As far as the accomodation is concerned, the State Government PWD Department is giving accomodation to the High Court judges.

I would request the hon. Minister to take it up with the Central Public Works Department so that accomodation could be provided.

Sir, there is now judicial activism in our country. It is not there in the entire country. It is there only in Tamil Nadu. After Mr. Karunanidhi formed the Government, he set up a court called the * court. It is called a Special Court. This court is set up only against AIADMK. people.Three judges were appointed. There was a vigilance enquiry against a particular judge...(*Interruptions*)

SHRI S. VIDUTHALAI VIRUMBI: Sir, it is irrelevant. (*Interruptions*)

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* Expunged as ordered by the Chair.

SHRI N. THALAVI SUNDARAM: If you are interested, you can reply (*Interruptions*)

SHRI S. VIDUTHALAI VIRUMBI: When Mr. Sivasubramanian spoke, he did not say anything. (*Interruptions*) This is not the proper way. (*Interruptions*) He is casting aspersions on a Chief Minister. This is not proper. I won't agree. (*Interruptions*) No Member has go any right to cast aspersion on the Chief Minister of any State in India. (*Interruptions*)

THE VICE-CHAIRMAN: (SHRI MD SALIM): Mr. Viduthalai Virumbi, please sit down. Mr. Sundaram, you have to speak on the Bill and not about any other thing.

SHRI N. THALAVAI SUNDARAM: Sir, I would request the hon. Minister. Our learned friend, Mr.Bhandari, talked about the corruption in the lower judiciary. I agree. There was one judge. A vigilance enquiry was conducted by a High Court Judge on 1.12.1993. This judge was appointed as a special judge to enquire into the cases against the AIADMK people. When this is so, how can we expect justice from such judges?

Therefore, I would request the hon. Minister. I would request the Chair to take necessary action. This Special Court is not at all a special court. It is a court formed by the DMK. It is called the * court. It has been set up only to take up cases against the former Chief Minister of Tamil Nadu, former Ministers and former MLAs. belonging to the AIADMK. I wonder, Sir, when the lower judiciary is the most corrupt, how can the judicial system...

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Sundaram, you have to conclude now.

SHRI N. THALAVAI SUNDARAM: District Judges. The name was recommended by the Chief Minister of Tamil Nadu. Sir, I would like to quote just one instance.

SHRI S. VIDUTHALAI VIRUMBI: Sir, this cannot be tolerated. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Sundaram, you cannot talk about individual cases. (*Interruptions*)

SHRI S, VIDUTHALAI VIRUMBI: Would you allow me to speak, Sir? (*Interruptions*)

THE VICE-CHAIRMAN (SHRI MD. SALIM): How can I listen when so many people are speaking at the same time? (*Interruptions*)

SHRI S. VIDUTHALAI VIRUMBI: He is casting aspersions on the Chief Minister. I am sorry. (*Interruptions*)

THE VICE CHAIRMAN (SHRI MD. SALIM): Mr. Sundaram, If you want to say anything on the Bill, you can do so. Otherwise, nothing would go on record. (*Interruptions*) I would not allow you to speak about individual cases.

SHRI N. THALAVAI SUNDARAM: I am not attacking aboybody. I am not attacking the State Government. I am only referring to our party matter.

THE VICE-CHAIRMAN (SHRI MD. SALIM): You settle your party matters outside.

SHRI N. THALAVAI SUNDARAM: Sir, the former Chief Jutice of the Supreme Court, Justice Ranganath Mishra, is here. There was an instance in our country.

SHRI S. VIDUTHALAI VIRUMBI: Sir, I would like to know whether you would allow me.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Virumbi, please sit down.

SHRI N. THALAVAI SUNDARAM: Only in our State, such a thing has happened. Only in our State, a Special Court Judge ordered the attachment of the movable property of the Opposition Leader. Such a thing has not happened anywhere in our country.(*Interruptions*)

SHRI S. VIDUTHALAI VIRUMBI: Is it relevant to the Bill we are considering? Is it relevant? (*Interruptions*) A judge enquired into the corruption charges against Ms. Jayalalitha. The judgment was reserved. (*Interruptions*) He was transferred before delivering the judgment. He was elevated to the High Court. (*Interruptions*) This is the way the Central Law Ministry is acting. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI MD. SALIM): Nothing will go on record. (*Interruptions*)

SHRI S. VIDUTHALAI VIRUMBI: Sir, you have to go through the proceedings. Only one observations I want to make. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI MD. SALIM): I have not allowed anybody to speak. Please take your seats. (*Interruptions*)

4.00 P.M.

SHRI S. VIDUTHALAI VIRUMBI: *

THE VICE-CHAIRMAN (SHRI MD. SALIM): I have not allowed anybody. Please take your seat.

SHRI S. VIDUTHALAI VIRUMBI: *

SHRI N. THALAVAI SUNDARAM: Sir, my point is ...

THE VICE-CHAIRMAN: Listen to me first.

SHRI N. THALAVAI SUNDARAM: Sir, I will conclude.

My point is that the judicial system in our country.....

SHRI M. VENLAIAH NAIDU (Karnataka): Sir, I am on a point of order.

The hon. Member, while intervening or while trying to refute the other Member's point, said that a particular, judge who was enquiring into some matters—I will not mention them—was transferred by the Union Government. Transfers of judges are dealt with by the Supreme Court and also by the Government. The Member is making the allegation against the highest court of the land in this House, talking advantage of the discussion that is going on. I am only requesting the Chair to see if has made such a remark. If my understanding is correct, the judge who was enquiring into some cases has been elevated, but the Member's charge is that the judge was transferred at the behest of the Law Ministry. You are a senior Member. You know that transfers to judges are not dealt with the Supreme Court. So, there is an insinuation against the judiciary as such. I request you to delete it.

THE VICE-CHAIRMAN (SHRI MD. SALIM); You have made your point. .... (*Interruptions*) ....

Nothing is going on record. If there is anything, I will check the record and find it out.

Mr. Sundaram, you have to conclude now.

... (*Interruptions*) ...

You refer to the Bill.

SHRI N. THALAVAI SUNDARAM: Different sets of Members of Parliament are there. I must know how the judicial system in my State is functioning. A lower court judge, a District Judge issues an attachment order against one opposition leader. There is a specific order, saying that if you want any moveable vehicle, you can file an application before the Special Court, and you can get the moveable vehicle. There is judifical activism in our country.

SHRI S. VIDUTHALAI VIRUMBI: Sir, this matter is *sub justice*, and it cannot be dealt with here.

THE VICE-CHAIRMAN (SHRI MD. SALIM): I will check up the record.

Mr. Sundaram, we are not reviewing a judgement of any court. I have told this to you repeatedly. You should know it. You are an old Member of this House. This House is not going to review a judgement or conduct of any judge or court.

*Not recorded

SHRI N. THALAVAI SUNDARAM: I am not reviewing any judgement. I am giving information.

SHRI S. VIDUTHALAI VIRUMBI: Sir, this is *sub judice.*

THE VICE-CHAIRMAN (SHRI MD. SALIM): I will check the record. If there is anything objectionable, it will be removed.

SHRI N. THALAVAI SUNDARAM: My point is that generally in our country.....

THE VICE-CHAIRMAN (SHRI MD. SALIM): You conclude.

SHRI N. THALAVAI SUNDARAM: I am concluding.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Your time is over.

SHRI N. THALAVAI SUNDARAM: I will conclude in one minute.

In our country, the judicial system is an independent system. Our learned, former Minister, Shri Bhardwaj, has also admitted that there are vacancies of judges in our country. Why are there vacancies. It is because the Chief Justices of some States are not sending their proposals to the Chief Justice of the Supreme Court. There was a judgement regarding appointment of judges. If you are going to attack the opposition parties, using the judicial system as a weapon, what will be the position of the Opposition parties in each and every State? Mr. Vice-Chairman, you belong to the ruling party as far as West Bengal is concerned. There is a provision in the Contempt Act, in section 15(1) (a), that is there is a criminal contempt, the Advocate General gives consent against anybody. We are discussing our State...

THE VICE-CHAIRMAN (SHRI MD. SALIM): We are not discussing your State. You should understand this. If you have anything to say on the Bill, you say it in a single sentence. Otherwise conclude. I am not allowing other things.

SHRI N. THALAVAI SUNDARAM: How is the judicial system functioning in our country? We have got the Supreme Court and the High Courts.

SHRI M. SANKARALINGAM (Tamilnadu): Sir, I have a point of order. .....*(Interruptions)*

THE VICE-CHAIRMAN (SHRI MD. SALIM): Please sit down. I am not allowing you. There is no point of order.

SHRI N. THALAVAI SUNDARAM: Sir, we appreciate the Bill on the salaries of the Judges of the Supreme Court and the High Courts. As per the Constitution, if there is a Supreme Court, there are also High Courts in the Country. If there had been no Supreme Court and High Courts, all the AIDMK Cadre and the former Chief Minister would have been in jail in the regime of the present Chief Minister.

SHRI S. VIDUTHALAI VIRUMBI: Mr. Vice-Chairman, Sir.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Your party got its time. You have made your point.

SHRI S. VIDUTHALAI VIRUMBI: No, I had not made my point. You had asked me to sit down and I abided by that decision. Sir, he had actually addressed about the appointment of judges as well as constitution of ...

THE VICE-CHAIRMAN (SHRI MD. SALIM): We cannot allow you to use the House to trade charges and counter-charges. Please sit down.

SHRI S. VIDUTHALAI VIRUMBI Sir, the question about constitution of special courts is also *sub judice.* He cannot comment against that. Then on the appointment of judges. He has dealt with *sub judice* matters. The observations made by the hon. Member are totally unwarranted and untrue. He has made irrelevant statements in the august House. His observations...

THE VICE-CHAIRMAN (SHRI MD. SALIM): Please, sit down.

SHRI S. VIDUTHALAI VIRUMBI Half a minute please. He has tried to cast aspersions...*(Interruptions)*

THE VICE-CHAIRMAN (SHRI MD. SALIM): Nothing will go on record. I cannot allow you to make observations on the speeches of others. Please sit down. In the gap of two or three years you have forgotten everything. You should know the procedure of the House. I cannot allow you to make observations on the speeches made by other hon. Members. *(Interruptions)* please sit down. *(Interruptions)* Do you follow me? I told you that I will go into the record. If there is anything objectionable, I will take action on that. That is all. Now, Shri Satish Pradhan.

श्री सतीश प्रधान (महाराष्ट्र): आदरणीय उपसभाध्यक्ष जी, आज जजिज़ के वेतन में बढ़ोत्तरी करने का बिल हमारे सामने है जजिज़ के वेतन में बढ़ोत्तरी करने का जो निर्णय सरकार ने किया है, मैं माननीय मंत्री जी को इसके लिए धन्यवाद देना चाहता हूं और मैं इसका समर्थन करने के लिए खड़ा हुआ हूं। लेकिन साथ ही साथ मैं कुछ और बातें इसी विषय से संबंधित सदन के सामने रखना चाहता हूं। जिस ढंग से हम हाई कोर्ट और सुप्रीम कोर्ट के जजिज़ के वेतन में वृद्धि करने के विषय पर चर्चा कर रहे हैं, उसी के साथ-साथ जो सैशन कोर्ट हैं या जो दूसरी नीचे की सब-कोर्ट्स हैं, उनके जजिज़ के वेतन वृद्धि के विषय पर भी चर्चा करने की आवश्यकता है, उस पर निर्णय करने की आवश्यकता है, यहां पर अभी चर्चा हुई है और चर्चा करते हुए कई सम्मानीय सदस्यों ने बताया कि कोर्ट्स के सामने बहुत सारे निर्णय आज तक पैंडिंग हैं और जजिज़ की बहुत सारी जगहें खाली पड़ी हुई हैं, इसके संबंध में कोई निर्णय नहीं हुआ है। मैं एक और बात अपनी तरफ से रखना चाहता हूं कि सैशन कोर्ट के जजिज़ का एक ऑल इंडिया का फैडरेशन है, उनको भी न्याय चाहिए, इसके लिए उनको हाई कोर्ट में रिट पैटीशन देने की आवश्यकता होती है। इस विषय में हमें सतर्क होना पड़ेगा, सरकार को सतर्क होना पड़ेगा और सरकार को इस विषय में जल्दी से जल्दी निर्णय लेना पड़ेगा, यह मामला ऐसा है—कोई पर्टिकुलर केस है, ऐसा नहीं है — यह बहुत गहन विषय है इसलिए मैं आपके सामने रखना चाहता हूं। इनकी मांग है कि सभी लोगों को जो टी० ए०, डी० ए०, दिया जाता है, हाउस रैंट दिया जाता है, सिटी अलाउंस दिया जाता है और जो सारे अलाउंस दिये जाते हैं वह जो खर्च करते हैं, उसको रीइम्बर्स करने के लिए सारे अलाउंस दिये जाते हैं। जहां तक मुझे ध्यान है, यह अलाउंस जो दिये जाते हैं, रीइम्बर्स करने के लिए दिये जाते हैं। हाई कोर्ट और सुप्रीम कोर्ट के जजिज़ को भी सारे अलाउंस मिलते हैं। यहां पर पर्क्स के बारे में चर्चा हुई उनको कोई इन्कम टैक्स देने की आवश्यकता नहीं रहती, लेकिन जो नीचे के जजिज़ हैं, उनको जो अलाउन्सिज मिलते हैं उसके ऊपर इन्कम टैक्स लगता है और वह उनकी सैलरी से डायरेक्टली काट लिया जाता है। इस विषय पर कुछ निर्णय करके इसको हटाने की आवश्यकता है। ऐसा मुझे लग रहा है। जो लोग नौकरी करते हैं, जो सैलरी परसन हैं, उन सभी का सैलरी से इन्कम टैक्स काट लिया जाता है। इससे क्या परिस्थिति पैदा होती है वह मैं आपके सामने रखना चाहता हूं। जैसे कि आप समझ लें जो हाउस रेंट दिया जाता है वह हाउस रेंट किसको दिया जाता है? एम्पलाइज को सरकार अपनी तरफ से रहने के लिए मकान देती है, आधे लोगों को मकान देती है या जो एम्पलायर्स हैं वह एम्पलायर्स अपने एम्पलाइज़ को मकान देंगे, लेकिन किसी को मकान मिलता है और किसी को नहीं मिलता है। जिसको मकान मिलता है उसको मकान में रहने के लिए कोई रेंट नहीं देना पड़ेगा और जब रेंट नहीं देना पड़ेगा तो उसको टैक्स नहीं देना पड़ेगा और जितना रेंट होता है उतना हाउस रेंट नहीं मिलता है। जिसको सरकारी मकान नहीं मिलता है उसको हाउस रेंट मिलता है तो उस से उस हाउस रेंट पर इन्कम टैक्स ले लिया जाता है। मैं समझता हूं कि इसमें जो अन्तर है इसको निकालने की आवश्यकता है, ऐसा मुझे लग रहा है। जैसे एक घर में एक जज साहब हैं और उनकी मिसेज एडवोकेट हैं। दोनों का एक ही घर का मामला है लेकिन जज साहब नौकरी करते हैं और जो कुछ अलाउन्स उनको मिलते हैं उसके ऊपर उनको टैक्स देना पड़ता है लेकिन जो उनकी मिसेज एडवोकेट हैं उसके लिए सुबह में जो चाय का खर्चा होगा वह प्रोफेशनली खर्चे में जाता है। वह अपना ज्ञान बढ़ाने के लिए जो न्यूज पेपर पढ़ती है उस पर भी कोई टैक्स नहीं लगता है। इसमें भी जो अन्तर है यह अन्तर निकालने की आवश्यकता है, ऐसा मुझे लग रहा है। इसलिए मैं माननीय मंत्री जी से प्रार्थना करूंगा कि इस विषय पर आप जरा सतर्क हो जाइए और इस विषय में जल्दी से जल्दी कुछ निर्णय कीजिए। यही मेरी प्रार्थना है। धन्यवाद।

THE VICE-CHAIRMAN (SHRI MD. SALIM): Now, the Mover of the Resolution.

श्री ईश दत्त यादव: सर, श्री रमा शंकर कौशिक जी का नाम है वह नये सदस्य हैं।

उपसभाध्यक्ष (श्री मोहम्मद सलीम): आपकी पार्टी को जो समय दिया हुआ था वह खत्म हो गया है।

श्री ईश दत्त यादव: मान्यवर, एक मिनट आप हमारा निवेदन सुन लीजिए। आपके पूर्व जो पीठासीन अधिकारी थे उन्होंने कहा था इसलिए हम प्रार्थना कर रहे हैं। आप केवल दो ही मिनट दे दीजिए। वह नये सदस्य हैं।

श्री रमा शंकर कौशिक (उत्तर प्रदेश): सर, इनका समय भी काट लिया था।

श्री ईश दत्त यादव: हमको रोका भी था।

उपसभाध्यक्ष (श्री मोहम्मद सलीम): इस बिल के लिए एक घंटे का समय निर्धारित किया गया था, दो घंटे 15 मिनट का समय हो गया है और अभी मंत्री जी का रिप्लाई बाकी है, मूवर आफ दा रिजोल्यूशन बाकी है। दिक्कत यह है कि बहुत सी ऐसी रिक्वेस्ट हैं, एक नहीं है। जब एक घंटे का समय निर्धारित किया जाता है तो एक-एक पार्टी को एक-एक मिनट, दो-दो मिनट का समय मिलता है। आपकी पार्टी का समय ही दो मिनट था तो उसमें से कितना आपका समय काटा होगा। इस पर कई नये सदस्य भी बोले हैं। हमारे यहां ऐसा कन्वेंशन है कि अगर कोई नया मेम्बर मेडन स्पीच देता है तो उनको समय के बारे में नहीं कहा जाता है, उनके लिए शुरू से ही समय की पाबन्दी नहीं है।

श्री रमा शंकर कौशिक: श्रीमन, आप तो बिल्कुल ही समय नहीं दे रहे हैं।

उपसभाध्यक्ष (श्री मोहम्मद सलीम): कौशिक जी, आप बैठिए। आज ही राज्य सभा खत्म नहीं हो रही है। यदि एक ही दिन में सभी नये सदस्य मेडन स्पीज देंगे तो दिक्कत भी हो जाएगी। आप फिर किसी दूसरे विषय पर बोल सकते हैं।

श्री ईश दत्त यादव: सर, हमारा निवेदन यह है कि आपके पूर्व जो पीठासीन अधिकारी थे उन्होंने इनका नाम भी लिख लिया था, सहमति भी दे दी थी और हमें इसी आधार पर रोक दिया था कि आपकी पार्टी के दूसरे सदस्य बोलेंगे। हम नहीं समझते कि उन्होंने एक निर्णय कर दिया हो.....

उपसभाध्यक्ष (श्री मोहम्मद सलीम): एक घंटे के अन्दर समाप्त हो जाता तो आपको जरूर समय दिया जाता। अब एक घंटे का समय पार हो गया है।

श्री ईश दत्त यादव: अगर एक घंटे का समय निर्धारित था और एक घंटे से ज्यादा समय हो गया तो उसके लिए ये तो कोई गुनहगार नहीं है।..

उपसभाध्यक्ष (श्री मोहम्मद सलीम): गुनाह नहीं किया है।

श्री ईश दत्त यादव: इसलिए हमारा निवेदन यह है कि आप उन्हें दो मिन्ट का समय बोलने के लिए दे दीजिए। वह दो मिनट से ज्यादा समय नहीं लेंगे।

उपसभाध्यक्ष (श्री मोहम्मद सलीम): मेडन स्पीच है इसलिए दो मिनट की बात नहीं रहती है। माननीय सदस्य किसी और इश्यू पर बोल लेंगे। नये सदस्यों को मेडन स्पीच में पूरा भाषण देना चाहिए। दूसरे कई सदस्य बोले हैं, मेडन स्पीच दी है, पूरा भाषण दिया है, फिर किसी समय पर बोल सकते हैं। श्री गुरुदास दासगुप्त।

SHRI GURUDAS DAS GUPTA: Sir my withdrawal of the Bill shall depend on the reply that the hon. Minister will make. It will depend on that. Why am I saying so? Very frankly, I feel extremely subdued by the presence of the illustrious legal luminaries participating on the question of payment of salaires to Judges. I am sorry it is an awkward commercialisation when it is said that Judges will lose income when they sit on the Bench leaving the courtyards of the Bar. This is awkward commercialisation because if this logic is extended, then, doctors will refuse to work in government hospitals because they are called upon to work for the country and for the downtrodden; if this logic is extended, then the best intellectuals of the country will have a plea to go for lucrative jobs in America, leaving their responsibility towards the nation in India. Therefore, I would like our legal luminaries to kindly reconsider the argument that is being advanced in this august House.

Sir, whether a Judge should get more or less than the Cabinet Secretary is again, in my opinion, a dispute on the comparative location of position in the hierarchy. We have been listening to this. But let the country put an end to it. I agree that Judges should be given a decent salary so that they do not fall a victim to the provocation of allurement. I

agree that there should have been an increase much earlier. But what I do not agree with is that there was no need for taking the course of promulgating an Ordinance. It should have been done in the normal course through the normal legislative transaction. And, it is for the Government to consider whether the hefty increase that is being allowed not only with respect to the judiciary but with respect to the people occupying the highest positions of the governmental hierarchy, is all justified. It is for the Government to consider because there is also a social question of serious income discriminations in the country. That does not mean that I oppose this Bill, Sir. There is no question of that. But, at the same time, I implore upon the Minister looking after the department of Law to express the Government's concern on the piling up of cases. May be, the Supreme Court is doing good. But what about the High Courts? There should have been a word on that. There should have been a word on the piling up of cases? what about the Judges not delivering judgments even after hearing the case? What about that? It is a question of social accountability. I believe that the judiciary is a most important component of our functional democracy and I applaud some of the recent judicial pronouncements that must be construed to be important contributions for a proper defence of the rule of law in the country. I applaud that. But, at the same time, there are some grey areas. I wish the Government made its position clear on this. Thank you.

SHRI M. THAMBI DURAI: Mr. Vice-Chairman, Sir, I am very grateful to the hon. Members for contributing their ideas regarding our judicial system. This increase in the salaries of judges has not been suddenly decided upon by this Ministry. There are a lot of precedents as to how and why we have increased the salaries of Judges. Hon. Member, Shri Bhardwaj, explained the steps he had taken during his period to give a lot of facilities to the Judges because the facilities were important. We want better and efficient people to occupy that high position. When they are occupying such a position, they are sacrificing many things. We have to give the necessary facilites to them. That is more important. The Hon'ble Member, Shri Gurudas Das Gupta, was expressing his own apprehension about the promulgation of the Ordinance. He said that this has become a fashion with the present Government first to promulgate an Odinance and then come to Parliament. (*Interruptions*)

SHRI GURUDAS DAS GUPTA: I said that this has become a fashion with all the Governments. I did not say that this has become a fashion with the present Government.

SHRI M. THAMBI DURAI: I would like to inform the hon. members that all these Ordinances were promulgated by the previous Government. Now, they have come in the form of Bills before both the Houses of Parliament.

SHRI GURUDAS DAS GUPTA: Mr. Minister, you are trying to pass the buck on to the previous Government.

SHRI M. THAMBI DURAI: The matter regarding the increase in salaries and allowances of the Supreme Court and the High Court judges has not been taken up by this Government. It was taken up by the previous Government. But the Bill could not be passed. Now, due to urgency, the Bil has to be passed. We have to respect the Parliamentary system. We also want to respect the feelings of the hon'ble Members. That is our intention. The first decision to revise the salaries and emoluments of the judges was taken by the Fourth Pay Commission. We had to revise the salaries and allowances accordingly. It is not that their salaries and emoluments have been increased all of a sudden. Shri Gurudas Das Gupta has referred to the threefold increase in the salaries and allowances of the Supreme Court and High Court judges, that is, from Rs. 10,000/- it has been increased to Rs. 30,000/- . He seems to be more concerned about that thing. In fact, at

the time when the Fourth Pay Commission report was given effect to, the judges of the Supreme Court were drawing about Rs. 5,000/- p.m. or Rs. 5,500/- p.m. At that time, it was made Rs. 10,000/- p.m. as per the recommendations of the Fourth Pay Commission. Now, as per the recommendations of the Fifth Pay Commission, their salaries have been increased by three times. In fact, we have recieved a letter from the Chief Justice of India which was addressed to the Prime Minister and the Government, wherein a request was made to revise the salaries of judges. That is the other reason why we have taken a decisioin to revise their salaries. We don't want to delay this matter. If we do so, a wrong impression will be created in the minds of the people. Not only this Government but the previous Government also had taken a decision in September 1997 to revise the salaries of the Supreme Court and the High Court judges. They had also promulgated in an Ordinance. They had completed all the formalities and it was approved by the Cabinet and sent to the President for his assent. The President did not give his assent because by that time, elections had been declared. So, it could not be passed at that time. That is why this Ordinance was delayed. But after the completion of the General Elections, once again a letter has come from the Chief Justice of India requesting for the revision of salaries of the judges of the Supreme Court and the High Courts. Once the other government servants are getting salaries as per the recommendations of the Fifth Pay Commission, why is the Higher Judiciary not given the revised salaries? So, after having received two letters from the Chief Justice of India, we took a decision to thrash out this matter. We thought it proper to bring an Ordinance and the President promulgated the same. Had we not done it, it would have sent a wrong signal. That is the main thing. Now, I request all the hon. Members to extend their cooperation in passing this Bill. Many hon. Members, while speaking on the Bill, have referred to the cases pending in various High Courts. They wanted to know as to what action has been taken by the Government in this direction In that context, I would like to give some statistics. I would also inform the House about various measures taken by the Government. What are the powers of the Law Ministry? After the judgement of the Nine Judges, what role has the Law Minister to play in the whole thing? How are we appointing the judges? What role am I playing as the Law Minister? I would like to make all these points very clear.

As regards the pending cases, it is my duty, as you suggested, to take various measures to see that the cases are cleared early. We have to request the Judges or the people concerned to clear the pending cases as early as possible in order to avoid delay in rendering justice to the people because, as our Members said, justice delayed is justice denied. That is a fact. In the pendency of cases, the Supreme Court has shown a downward trend. The pendency of cases which was 1,04,936 at the end of 1991 has come down to 19,561 as on 1.5.1998. Such a huge decrease has taken place. This decrease is due to the various steps taken by the Supreme Court. I am referring to the contribution made by the Supreme Court. I don't want to refere here to our contribution. I am telling all this as a Minister. More practical categorisation, grouping of cases non-accumulation of defective matters, reservation of more time for old cases pending—these are the various measures that we have taken and they have led to this decrease in the number of pending cases. As I said earlier, there are a lot of cases pending in some High Courts and their number is increasing now. The pendency of cases in the High Courts which was 26.51 lakhs at the end of 1993 increased to 29.81 lakhs in 1995 and further increased to about 41.74 lakhs at the end of 1997. This is a fact. This is largely due to the increased institution of cases on account of the awareness of the rights on the part of the citizens. There was a time when the cases were very few, maybe, due to the fact

that people didn't want to go to court. Now everbody is aware. People want to go to court to get redressal of their cases; that is why, the number of cases is increasing. There are so many factors like population explosion, industrial development, that are making the number of the cases increase. I want to tell you another fact: "More than 50 per cent of the total cases are pending only in four High Courts."

This is the main thing I am telling you. In Allahabad High Court, the pendency of cases is 8,65,445. This is the number of pending cases in Allahabad High Court alone. In Madras High Court, it is 3,26,619; in Calcutta High Court, it is 2,82,209 and in Kerala High Court, it is 2,50,026. These are the High Courts where the number of pending cases is more.

SHRI GURUDAS DAS GUPTA: What is the remedy?

SHRI M. THAMBI DURAI: We are taking all the measures. Some of the Members have said that we are delaying the appointment of judges. I want to make it clear that at the Ministry level we are not adopting any kind of attitude to delay the process of appointment of judges. I want to make it clear that in my office there is no file pending. The proposal has to come from the High Courts. The Chief Justice has to make a proposal. When it comes, we will proceed. Whenever the Chief Justice of India recommends a proposal, we will consider and finalise that. This process goes on. So far as the Ministry is concerned, we are making all efforts and we have also written so many letters to the Chief Justices of the High Courts, the Chief Ministers and the other people concerned to recommend the names of judges to fill up the vacancies quickly. Therefore, we are taking measures. If they recommend the names, the vacancies will be filled up definitely.

SHRI HANSRAJ BHARDWAJ: Mr. Minister, will you yield for a minute? You said, "Recommendations have not come from the High Courts." I am sorry, let me tell you——the Allahabad High Court has been referred to; this is my information and also of the Judges—that they have recommended the names of Judges, and they have recommended the names long ago, and the names have not been finalised. I don't know why; I don't blame you. It may be pending with the Chief Justice of India. And similarly, I have information that from Punjab, Haryana, the recommendations have come; the proposals have not been cleared by the earlier Chief Justice, and even how, they are not cleared. Therefore, I only remind you as you are one of my good friends: Why should it reflect on your Government and also on you? While emphasising that you are answerable to the people of India and the Parliament, you should ask the Chief Justice of India or the Chief Justices of the High Courts to expedite the matter. You emphasise this point because this pendency relates to filling up of vacancies. Therefore, please make a statement. We are not blaming the Government at all because we are extending our support to you and in this noble cause we are with you. We won't like the Government to get a bad name when it is not due to it. Therefore, I am reminding you as a friend that wherever the difficulty is, the people of India must know that.

If the judiciary is not recommending, you have the answer. You can make your own recommendations to them. There is the other memorandum of procedure.

SHRI M. THAMBI DURAI: Thank you very much, Bhardwaj Ji, for your valuable suggestions. You have a lot of experience. I am a new person who occupies this position. I am not passing sweeping remarks on all the High Courts. I am not making any such sweeping remarks. There is a delay in some place That may be the reason. I am not making any sweeping remarks on all the Chief Justices. As soon as we are getting the names we are processing them and we are trying to appoint them. This way it is going on. Therefore, there is no lapse on

the Ministry's side. That is what I want to convey. In the same way, some of the Members have mentioned about the transfers also. I want to make an observation about what our hon. Justice Mishra has said. He has quoted some judgements also. He has pointed out what the role of the Judges, the Ministers and all that. He has also made a comparison. Once they are appointed till their retirement the Judges are going to continue in some position. The Ministers are not like that. If our Ministry is dissolved tomorrow or the day after tomorrow, we have to go out. We cannot make a comparison between the Judges and the Members of Parliament, the Members of the Lok Sabha. In the present political system or the democratic system that is prevailing in our country elections to the Lok Sabha may come at any time. That is the situation which we are facing. When such is the situation, how can you compare the Judges with the Ministers or the Members of Parliament? Our period is very limited. We are functioning in that period, whereas the Judges are having their own way of functioning. They are independent. We cannot compare one with the other. They are having their own role. But they need some facilities. We have to provide those facilities. Many talented people are coming to this position, though they can earn lakhs of rupees as a lawyer. When they are coming to this kind of a position, we should appreciate their service. As Das Guptaji has said, some intellectuals are going abroad. Why are they going abroad? We have to think about it seriously. They are not able to get good facilities in our country. That is why most of the people are going abroad. That is one reason. The research facilities available may not be according to their expectation. That is another reason. So, it is necessary to create a conducive atomosphere for an intellectual to render his service. That is very important. If you are not going to give such kind of facilities, definitely you cannot get good judges. We have to give them those facilities.

Another point is this. One of our colleagues has raised an apprehension that I am doing certain things, the Ministry is transferring this Judge or that Judge. As I told you, I must understand my power. I can say that I am functioning as a clerk. Whatever they are telling up to do, we are doing. I cannot transfer any Judge. Am I having any power to transfer any Judge? Am I having any power to promote anyone and transfer away to help my leader? I cannot do those things. This is what some Member was saying. Not only is he making it here, but his leader was also speaking like that in the Tamil Nadu Assembly. *(Interruptions)*...

SHRI S. PETER ALPHONSE (Tamilnadu): Sir, I am on a point of order. *(Interruptions)*...

SHRI M. THAMBI DURAI: I am telling you that this is a fact. *(Interruptions)*...You can refer to the records of the Assembly of Tamil Nadu and see what they spoke about me. *(Interruptions)*...I stand by my statement. *(Interruptions)*...I am speaking with a strong sense of responsibility. *(Interruptions)*. I am just saying in the House what they have stated about me in the Assembly. *(Interruptions)*...

SHRI S. PETER ALPHONSE: Sir, I am on a point of order. *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI MD. SALIM): Please don't refer to what happened in the Tamil Nadu Assembly. *(Interruptions)*...

SHRI S. PETER ALPHONSE: Sir, I am on a point of order. *(Interruptions)*...

SHRI S. VIDUTHALAI VIRUMBI: The advocate who argued for Jayalalita was appointed as Government Advocate. *(Interruptions)*...

SHRI S. PETER ALPHONSE: Sir, I am a point of order. *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Minister, you don't get into a controversy. *(Interruptions)*... Please take your seat. *(Interruptions)*...

SHRI S. PETER ALPHONSE: Sir, I am on a point or order. (*Interruptions*).

SHRI M. THAMBI DURAI: Sir, I am not yiedling. (*Interruptions*).

SHRI TRILOKI NATH CHATURVEDI (Uttar Pradesh): The Minister is not yielding. (*Interruptions*).

SHRI S. PETER ALPHONSE: Sir, I am on a point of order. (*Interruptions*). I am on a point of order.

SHRI M. THAMBI DURAI: I have not started it. They have been making allegations. (*Interruptions*). They have openly said that .....*Interruptions)*

SHRI S. VIDUTHALAI VIRUMBI: Sir,....(*Interruptions*).

SHRI M. THAMBI DURAI: I want to make it very clear. (*Interruptions*). Please allow me to speak. I want to clarify it. (*Interruptions*). I am not yielding. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI MD. SALIM): Let him conclude. (*Interruptions*).

SHRI M. THAMBI DURAI: I have the right to clarify it.

SHRI S. VIDUTHALAI VIRUMBI: *

The VICE-CHAIRMAN (SHRI MD. SALIM): It will not go on record. (*Interruptions*). Nothing is audible.

SHRI HANSRAJ BHARDWAJ: Sir, may I raise a point of order?

THE VICE-CHAIRMAN (SHRI MD. SALIM): Yes.

SHRI HANSRAJ BHARDWAJ: Sir, the discussion on transfer of judges is taking in a the wrong direction. The Minister has no power. (*Interruptions*).

SHRI M. THAMBI DURAI: That is what I am saying. But the hon. members are making allegations....(*Interruptions*). I want to explain it. How can they say....(*Interruptions*).

SHRI S. VIDUTHALAI VIRUMBI: Sir, he is talking....(*Interruptions*).

SHRI TRILOKI NATH CHATURVEDI: What Shri Bhardwaj has said is the correct position. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI MD. SALIM): I have made it clear from the Chair. Please don't refer to individual cases. (*Interruptions*)

SHRI S. VIDUTHALAI VIRUMBI: *

THE VICE-CHAIRMAN (SHRI MD. SALIM): It will not go on record. (*Interruptions*). It will not go on record. Mr. Virumbi, whatever you have spoken will not go on record. Let the Minister speak. (*Interruptions*).

SHRI M. THAMBI DURAI: Sir, I want to clarify it. *(Interruptions)* SHRI S. VIDUTHALAI VIRUMBI:*

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Virumbi, I have not allowed you to speak. How can it go on record? When the Chair has not allowed you, how can it go on record? (*Interruptions*).

SHRI S. VIDUTHALAI VIRUMBI:*

SHRI M. THAMBI DURAI: Sir, as Law Minister....(*Interruptions*).

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Minister, you are Law Minister. You should not refer to speeches made in a State Assembly. (*Interruptions*). That part is over.

SHRI M. THAMBI DURAI: Sir, What I am saying is, it has become a fashion. Some of my close friends and some Ministers have said in the State Assembly.....(*Interruptions*).

SHRI S, VIDUTHALAI VIRUMBI: Sir....

SHRI M. THAMBI DURAI: Listen to me. I have the right to speak. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI MD. SALIM): Let him explain.

*Not recorded.

SHRI S. PETER ALPHONSE: Sir, I am on a point of order. I would like to know whether any mention can be made of the proceedings of a State Assembly.

THE VICE-CHAIRMAN: (SHRI MD. SALIM): This is what I am saying. What is new about it? I have already told him. There are charges and counter-charges. The Minister should not indulge in it. Mr. Minister, you should not refer to that issue. Why are you again touching that issue? You should not refer to what some leaders have said in a State Assembly.

SHRI M. THAMBI DURAI: Sir, I am not mentioning any name.

THE VICE-CHAIRMAN (SHRI MD. SALIM): It is not a question of mentioning any name.

SHRI M. THAMBI DURAI: I am not mentioning any name.

THE VICE-CHAIRMAN (SHRI MD. SALIM): The point is in regard to the proceedings of a State Assembly.

SHRI M. THAMBI DURAI: Sir, I would like to know one thing. I would like to know whether anybody can make any remarks or any aspersions against a Central Minister.

THE VICE-CHAIRMAN (SHRI MD. SALIM): That is a subject of a State Assembly.

SHRI M. THAMBI DURAI: I have the right. I am a Minister here. I cannot defend myself there.

SHRI S. VIDUTHALAI VIRUMBI: Sir, he is....

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Virumbi, why are you interrupting? Let him speak.

SHRI M. VENKAIAH NAIDU: Sir, I am on a point of order. I would like to know whether the references made by the hon. Member have been expunged. He has made a direct charge against the Minister.

THE VICE-CHAIRMAN (SHRI MD. SALIM): I have already said that I would go through the record.

SHRI M. THAMBI DURAI: Regarding Benches, most of the Members wanted that more Benches should be set up. We have to set up Benches in different places. One hon. Member mentioned that a Ciruit Bench should be set up at Madurai. We are interested in establishing Benches not only at Madurai but in other places also as quickly as possible. We are making all efforts towards this. But we require the responses from State Governments as well. The Chief Justice is writing to the State Government to provide certain facilities for setting up a Bench. The State Government has to take action. But some Members sitting here speak as if we are not interested in it. I am sorry for that...(*Interruptions*)

THE VICE-CHAIRMAN (SHRI MD. SALIM): No, Mr. Virumbi, I am not allowing...(*Interruptions*) The Minister is not yielding...(*Interruptions*) When I don't allow you, nothing will go on record.

SHRI M. THAMBI DURAI: I have a file in my record stating that the Chief Justice of Madras has agreed to set up a Circuit Bench at Madurai. He has asked for providing necessary facilities. The Central Government has also written to the State Government to provide the facilities required. But we have not received any response so far. We are going to send reminders. As soon as the State Government provides all the facilities, we will immediately set up a Circuit Bench there.

Now I request the Members to pass this Bill unanimously. I also request Mr. Gurudas Das Gupta to withdraw his Resolution. I assure him that whatever suggestions he has given, we will definitely consider them.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Gurudas Das Gupta, are you withdrawing your Resolution?

SHRI GURUDAS DAS GUPTA: Considering the appeal made by the Minister and having the faith that he will be fulfil his assurance, I withdraw the Resolution.

The Resolution was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI MD. SALIM): I shall now put the Motion moved by Shri M. Thambi Durai to vote. The question is:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958, as passed by Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI MD. SALIM): We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 9 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI S. THAMBI DURAI: Sir, I move:

"That the Bill be returned."

The question was put and the motion was adopted.

THE FINANCE (AMENDMENT) BILL, 1998

THE MINISTER OF FINANCE (SHRI YASHWANT SINHA): Sir, I beg to move:

"That the Bill further to amend the Finance Act, 1979 and the Finance (No. 2) Act, 1996, as passed by Lok Sabha, be taken into consideration.

Taking into account a number of commitments made after the budget of 1997, including the pay commission award, the previous Government had, in order to raise additional resources, increased the special duty of customs on all imports (excluding POL and project imports) from 2% to 5% ad valorem and also raised the foreign travel tax for journeys undertaken to non-neighbouring countries from Rs. 300 to Rs. 750 per passenger. As the Parliament was not in session the legislative amendments required in section 35 of the Finance Act, 1979 and section 68 of the Finance (No. 2) Act, 1996 for implementing the above changes were effected by issue of an Ordinance, namely the Finance Act (Amendment) Ordinance, 1997 (No. 16 of 1997) dated the 16th September, 1997.

The above mentioned ordinance could not be replaced by a Bill during the winter session as the 11th Lok Sabha was dissolved. In order to enable the Government to continue to levy of Special customs duty and the foreign travel tax at the enhanced rates, another Ordinance was promulgated, namely the Finance (Second Amendment) Ordinance, 1997 (No. 24 of 1997) dated the 24th December, 1997 with the modification that the foreign travel tax was reduced from Rs. 750 to Rs. 500 per passenger, for journeys undertaken to non-neighbouring countries with effect from the 1st January, 1998.

The Finance (Second Amendment) Ordinance, 1997 could also not be replaced by a Bill, as after the General Elections, the Parliament met only for a very short duration. In order to ensure that the Govenrment could continue to levy the special duty of costoms and the foreign travel tax at the enhanced rates as envisaged under the Finance (Second Amendment) Ordinance, 1997, another Ordinance was promulgated namely the Finance (Amendment) Ordinance, 1998 (No. 5 of 1998) dated the 21st April, 1998.

I had introduced the Finance (Amendment) Bill, 1998 to replace the Finance (Amendment) Ordinance, 1998 in the Lok Sabha on 29th May,